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A

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OF

PRECEDENTS,

FROM

THE BEST MODERN MANUSCRIPT COLLECTIONS,

AND

Drafts of Actual Practice;

WITH

GENERAL COMMON FORMS AND VARIATIONS

ADAPTED TO ALL THE CIRCUMSTANCES USUALLY OCCURRING;

FORMING A

SYSTEM OF CONVEYANCING;

WITH

DISSERTATIONS, AND PRACTICAL NOTES.

By the late W. M. BYTHEWOOD, Esq.
of Lincoln's Inn, Barrister at Law.

The Second Edition,

CORRECTED, WITH ADDITIONS,

By JAMES STEWART, Esq.
of Lincoln's Inn, Barrister at Law.

VOL. I.

LONDON:

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1828.

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67, Chancery Lane.

PREFACE OF THE EDITOR.

A NEW edition of the first three volumes of this Work having been called for, the little that has been done by the Editor is now to be stated.

The law contained in the Notes and Dissertations to the first edition, has been brought down to the present time; the subsequent Cases and Statutes having been added, and where it has been thought necessary, stated at length and commented upon. Where any alteration has been made, either by statute or judicial decision, it has been pointed out and provided for; and where any error was discovered, it has been corrected.

The Precedents, although carefully revised, have not been altered; they remain precisely as in the first edition, and the original paging has been carefully preserved: the Index to the first edition, therefore, will also serve for this edition, except for the additional matter.

The Additions of the Editor are enclosed in brackets: when they occupy a whole page, it is distinguished by a letter added to the usual numeral; as, 200*a*, 200*b*. This, however, does not often occur.

As there is a considerable demand for the first volume, it is published separately. The second and third are in the press, and will speedily follow.

JAMES STEWART.

Trinity Vacation, 1828.
New Boswell Court, Lincoln's Inn.

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PREFACE OF THE AUTHOR.

In presenting the following Work to the profession, it may appear unnecessary to state, that the greater part of the Precedents were drawn by Counsel of the greatest eminence, because the superior excellence of the generality of the Forms must be manifest to any person in the least acquainted with the subject; the Precedents, the Variations, and the Notes added by myself, will, I hope, be received with candour. It would have given me pleasure to have inserted, in every instance, the name of the gentleman, by whom each instrument was drawn; but, as many of them are still living, it has been omitted altogether.

The great advantage of this Collection must be evident, because, with a very few exceptions of some short general forms, the precedents were drafts really drawn and used in the course of practice, and consequently may be regarded as the present method of Conveyancing.

I beg leave most respectfully to return my thanks to those Counsel and Solicitors, who have, with a liberality which peculiarly distinguishes Gentlemen of the Law, kindly and spontaneously lent me their extensive Manuscript Collections of Precedents and Drafts of Deeds.

The whole of this Work was originally intended to be published at once, and several heads of it have been for some time entirely perfected; but, in consequence of the determination to publish it in Parts, when little preparation had been made for those heads which under the present arrangement make the commencement, the publica-

tion has been unavoidably delayed. However, from the forward state of the manuscript, I have the satisfaction to say, that one of the succeeding Parts will appear about every two months, until the whole be completed.

Occasionally, where it was thought that parts of the Precedents might be omitted, without destroying the efficacy of the deed, they are included within crotchets, thus [ ]; but this rarely happens; the parts within parentheses, thus ( ), are adapted to alternative circumstances.

On searching for any form, the INDEX to the PRECEDENTS should invariably be consulted; because, although the Precedent sought for may not appear in the table of contents as a distinct instrument, yet in almost every instance, it will be found as a part of some other deed; so that a person of common experience may, from this collection, easily draw any instrument in conveyancing.

At the end of the work, it is my intention to supply such information on the Principles and Practice of Conveyancing, as may not have been previously included in the Annotations; and to give extracts from all the statutes in force relative to stamps on deeds, &c. together with the decisions of the Courts of Law and Equity thereon.

From persons, whose profession renders them so competent to appreciate the labour of selecting from many hundred Drafts, and voluminous Manuscript Collections of Precedents, and supplying annotations on such a variety of subjects, I hope for indulgence for any errors I may have committed, because they will be sensible of the difficulties I have had to encounter.

W. M. BYTHEWOOD.

4, *Gray's Inn Square,*
August, 1821.

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PRECEDENTS

IN

CONVEYANCING.

ACKNOWLEDGMENT.

ACKNOWLEDGMENT *from a Mortgagee, to a Mortgagor, of the Receipt of* TITLE DEEDS. OF RECEIPT OF TITLE DEEDS BY MORTGAGEE.

A SCHEDULE (*a*) of the several deeds and writings this day delivered by [*mortgagor*] to [*mortgagee*], upon the execution of a mortgage of certain lands and hereditaments, situate at in the county of for securing the payment by the said [*mortgagor*], his heirs, executors, and administrators, of the sum of pounds, and Schedule.

(*a*) When the mortgagor retains a copy of the abstract of title, including an abstract of the mortgage deed, the acknowledgment should be written at the bottom of it. On copy of the abstract.

When the mortgagee executes a counterpart of the mortgage deed, to be left with the mortgagor, the schedule of deeds and writings and the acknowledgment, should be indorsed on the counterpart, and signed by the mortgagee: in which case the title of the schedule may be; On counterpart of Mortgage Deed.

A SCHEDULE of the several deeds and writings, delivered to the within named [*mortgagee*], at the execution of the within written indenture.

OF RECEIPT OF TITLE DEEDS BY MORTGAGEE.

interest at five pounds per centum per annum, unto the said [*mortgagee*] his executors, administrators, and assigns.

10*th* & 11*th Feb.* 1762.—Indentures of lease and release, between A. B. of, &c. of the one part, and C. D. of, &c. of the other part.

11*th Feb.* 1762.—Indenture between G. H. of, &c. of the first part, the said A. B. of the second part, the said C. D. of the third part, and J. K. of, &c. of the fourth part, being an assignment of a term of five hundred years *in trust* to attend the inheritance, &c. &c.

22*d March*, 1822.—Indenture between the said [*mortgagor*] of the one part, and the said [*mortgagee*] of the other part, being a demise for one thousand years by way of mortgage for securing the payment of the sum of pounds and interest at five per cent. per annum.

23*rd March*, 1822.—Indenture between the said [*mortgagor*] of the first part, [*trustee of term*] of, &c. of the second part, the said [*mortgagee*] of the third part, and [*new trustee of term*] of, &c. of the fourth part, being an assignment of the said term of five hundred years *in trust* for better securing the payment of the said mortgage money and interest.

Acknowledgment.

I HEREBY acknowledge that the several deeds and writings above mentioned, were this day received by me; and I hereby undertake, to keep them with the same degree of care as I keep my own deeds and writings, papers, or other valuable effects (*b*); and upon payment of the mortgage

(*b*) It is now understood, that acceptance of goods to be kept *generally*, is merely an undertaking to keep them as the party receiving keeps his own. Hargr. n. Co. Litt. 89, a. (9). And the notion of Lord Coke, "that *to keep*, and *to keep safely*, are one and the same thing," (Co. Litt. 89. a.) was denied to be law, by the whole Court, in the time of Chief Justice Holt. *Coggs* v. *Bernard*, 2 Ld. Raym. 911, 912. A depository is responsible only for *gross* neglect; or, in other words, for a *violation of good faith*: and a depository, whose character is known to

money with interest, according to the purport, true intent, and meaning, of the above mentioned indenture of mortgage, I promise and agree to restore and deliver the same deeds and writings unto the said [*mortgagor*] his heirs or assigns, undefaced and uninjured (loss or damage by fire, and other inevitable accidents only excepted).

OF RECEIPT OF TITLE DEEDS BY MORTGAGEE.

WITNESS, my hand, the day of 18

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his depositor, shall not answer for *mere neglect*, if he take *no better care of his own* goods, and *they also* be spoiled or destroyed. If such a deposit of title deeds as the above, without any express stipulation as to the degree of care, be looked upon as a pawn or pledge, a *pawnee* is answerable only for *ordinary* neglect. But all bailees become responsible for losses by *casualty* or *violence, after* their *refusal* to return the things bailed, on a *lawful demand*. Jones on Bailments, 42, 120, 121. Noy's Maxims, 215, 216, 9th ed.

[See *Clarke* v. *Earnshaw*, 1 Gow, 30; *Peers* v. *Sampson*, 4 D. & Ry. 636.]

ACKNOWLEDGMENT *by two Vendors and the Wife of one of them, of a Deed before the Lord Mayor of London, indorsed thereon previous to enrolment in the Lord Mayor's Court, to bar the Wife of Dower.*

OF BARGAIN AND SALE IN LONDON TO BAR DOWER.

BE IT REMEMBERED, that on the day of 18 , personally came before me [ ] Lord Mayor of the city of London, the within-named [*vendor*] and [ ] his wife, and [*the other vendor*], and did then and there severally own and acknowledge the within written indenture, to be their free and voluntary act and deed: AND the said [*wife*] being by me, the said Lord Mayor, privately examined apart from her said husband, did declare her free and voluntary consent to the said deed, and that she had executed the same, without fear thereto or force of her said husband, or any other person; and that at the time of the execution thereof, she knew the same to be an absolute conveyance of the estate

Acknowledgment.

Separate examination of wife.

OF BARGAIN AND SALE IN LONDON TO BAR DOWER.

within-mentioned to the within-named [*purchaser*]: AND the said [*other vendor*] did also acknowledge the name [*his own name*] subscribed to the receipt indorsed upon the said indenture, to be his name and hand-writing, and that he had received the consideration money therein mentioned. IN TESTIMONY whereof, I, the said Lord Mayor, have hereunto subscribed my name, the day and year above written. (*a*)

Acknowledgment of receipt of consideration money.

Bargain and sale of lands in London to bar dower under the custom.

(*a*) A BARGAIN AND SALE of lands or tenements in London, executed by husband and wife, and *acknowledged* by them before the *Lord Mayor*, or the *Recorder*, and *one Alderman*, the wife being examined separately and apart from her husband, and proclaimed and enrolled in the *Hustings of Pleas of Land*, or *Common Pleas* of the *City*, is as effectual for barring a wife of *dower* as a fine in the Court of Common Pleas at Westminster, and answers every other purpose of a fine at common law, and consequently is a *proper* mode of conveying the estate of a married woman. Cru. Dig. 206. 2d ed. Com. Dig. *London.* (N. 3.) Bohun's *privilegia Londini*, 241, 3d ed. There is not any necessity for a separate bargain and sale, for if the release in fee have the words *bargain and sale*, which is generally the case, it may be used by the parties as a bargain and sale. See note *infra* under *assignments of leaseholds on purchases*, and Wms. n. 2 Saund. 97, b. (2).

The custom extends to other places.

This custom is not peculiar to London, for by the custom in many other cities and boroughs, a bargain and sale by the husband and wife, where the wife is examined by the mayor or other officer, binds the wife, and those claiming under her, and is equivalent to a fine. 2 Inst. 673. And by the stat. 34 Henry VIII. c. 22, All such customary conveyances shall be of force, notwithstanding the stat. 32 Henry VIII. c. 28. Com. Dig. *Baron and Feme* (G. 4.) 1 Rop. Husband and Wife, 139. Hughes on Writs, 119.

Inrolment of deeds affecting lands in London.

Deeds *conveying* or *affecting* lands or tenements in London, or any interest therein, may be enrolled either in the *Hustings of Pleas of Land*, or *Common Pleas*, the execution thereof being first *acknowledged* before the mayor, or the recorder and one alderman, and proclamation thereof made at one of these courts. Bohun, 241.

Inrolment of wills affecting lands in London.

Wills *devising* lands or tenements in the city and liberties of London, executed and attested as by law is required, for passing real estates, may be inrolled either in the *Hustings of Pleas of Land*, or *Common Pleas*, the same being first *proved* in open court on the oaths of two of the subscribing witnesses thereto, and proclaimed at one of these courts, Bohun, 211. and which according to Perkins bind all

OF BARGAIN AND SALE IN LONDON TO BAR DOWER.

manner of persons as strongly as a fine with proclamations ; if they do not make their claim unto the same lands or tenements within one year after the proclamations made. Perk. s. 577. *sed quære, et vide* 32 Henry VIII. c. 2, and 21. Jac. 1, c. 16. 4 Bac. abr. 462. Gwill. ed. *Limitatations of Actions* (B).

It is observable, that such inrolments may in many cases be attended with the most beneficial effects, as the ill consequences attending accidents which may befall deeds or wills, or the death of the witnesses thereto, are thereby guarded against ; and that as the expense attending the inrolment of deeds and wills, and this mode of conveying the estates of married women, and of barring dower being inconsiderable, it renders them matters deserving attention. Emerson on the Courts of Law of the City of London, 25. The fees for inrolling a deed, according to Bohun, 241, are 16*s*. 8*d*.

[A similar mode of conveying the estates of married women and of barring dower prevails in the West Indies: the respective rules for which are laid down in the Acts of Assembly of the different islands. See Stokes' W. I. p. 443. Vol. 2, p. 227. 232. Howard's Laws of the British Colonies, *passim*. A question sometimes arises as to the necessity of stamping a deed thus affecting property in the West Indies, but which is executed here. It would seem by the case of *Abraham* v. *Dubois*, 4 Camp. 269, that such a deed, to be given in evidence in this country, must be stamped; but this does not seem necessary to its being evidence in the colonies, if all the prescribed forms have been complied with. See on this subject *Alves* v. *Hodgson*, 7 Durn. and E. 241; *Clegg* v. *Levy*, 3 Camp. 166; *Jordaine* v. *Latchbrooke*, 7 D. and E. 601; *Snaith* v. *Mingay*, 1 M. and S. 87; *Crutchley* v. *Mann*, 1 Marsh. 29, and the references in these cases. *Ed.*]

AND APPROBATION OF A PURCHASE BY A JUDGMENT CREDITOR.

ACKNOWLEDGMENT *and Approbation of a Purchase by a Judgment Creditor, and Declaration that Purchaser shall enjoy, freed from that Incumbrance.*

Recital of mortgage in Fee :

WHEREAS [*vendor*], of, &c. being seised in fee of a messuage, &c. in in the county of did by indentures of lease and release, bearing date on or about

AND APPROBATION OF A PURCHASE BY A JUDGMENT CREDITOR.

the day of 18 , convey the same with the appurtenances to [*mortgagee*], of, &c. his heirs and assigns, by way of mortgage, for securing pounds and interest: AND WHEREAS the said [*vendor*] lately agreed with [*purchaser*], of, &c. for the sale to him of the said messuage, &c. for the sum of pounds, to be paid to the said [*mortgagee*] in part satisfaction of the sum of pounds, due to him for principal, interest, and costs, upon security of the said premises; and in pursuance of that agreement, and in consideration of the said sum of pounds, paid by the said [*purchaser*] to the said [*mortgagee*], the said messuage, &c. have by indentures of lease and release, bearing date respectively the and days of 18 , been conveyed and assured to the said [*purchaser*], his heirs and assigns for ever: AND WHEREAS [*plaintiff*], of, &c. did obtain a judgment against the said [*vendor*] in his Majesty's Court of King's Bench at Westminster, as of term in the year of the reign of his present Majesty King GEORGE the *Fourth*, for the sum of pounds, besides pounds and shillings for costs; which judgment is in equity an incumbrance upon all the freehold lands and houses which the said [*vendor*], at the time of obtaining the said judgment, was entitled unto; THEREFORE, for the satisfaction of the said [*purchaser*], I the said [*plaintiff*] do hereby declare my approbation of the sale and conveyance to him made as aforesaid; and that I am well satisfied that the sum of pounds by him paid to the said [*mortgagee*] for the purchase thereof, is a full and valuable consideration for the same: and I promise and declare, that I, my executors, administrators, or assigns, shall not, nor will, commence or prosecute any action, suit, process, or proceeding, in any court of law or equity, whereby the said [*purchaser*], his heirs, executors, administrators, or assigns, or the said messuage, &c. by him purchased as aforesaid shall or may be affected or prejudiced in any respect howsoever, by reason or means of the said judgment. WITNESS, my hand, the day of 18 .

of having contracted to sell mortgaged estates, and that purchase money was to be paid to mortgagee in part satisfaction of mortgage money:

of conveyance to purchaser in fee:

of obtaining a judgment against a vendor.

For the satisfaction of purchaser, the judgment creditor declares his approbation of the sale; and covenants not to commence any action or do any thing to prejudice purchaser or the estate purchased.

AFFIDAVIT.

OF THE EXECUTION OF A LETTER OF ATTORNEY.

AFFIDAVIT *of the Execution of a Letter of Attorney.*

A. B. of, &c. maketh oath, and saith, that he was present and did see C. D. of, &c. duly sign, seal, and as his act and deed, deliver the letter of attorney hereunto annexed; *and* that the name C. D. thereunto set as the name of the party executing the same, is of the proper hand writing of the said C. D.; *and* that the name E. F. and A. B. set or subscribed as witnesses to the due execution of the said letter of attorney, are of the respective proper hands writing of the said E. F. and of this deponent.

A. B.

SWORN at in the county of , the day of , 18 , before me,

G. H.
Master Extraordinary in Chancery.

OF THE EXECUTION OF DEEDS.

AFFIDAVIT *of the Execution of Deeds.*

A. B. of, &c. maketh oath, that he was present, and did see the indentures hereunto annexed, bearing date, &c. and also one other indenture, bearing date on or about the day of 18 , and made or expressed to be made between, &c. (*a*) sealed and delivered by C. D. of, &c. in the said indentures named; and that he, this deponent, subscribed his name to each of the said writings, as a witness to the execution and delivery thereof respectively.

Sworn, &c. *ut supra.*

(*a*) If the deed be an appointment requiring signing, say, "signed, sealed, and delivered,"

For other forms of *Affidavits* see INDEX, tit. "AFFIDAVIT."

AGREEMENT.

FOR FURNISHED LODGINGS, OR A FURNISHED HOUSE.

Agreement *for furnished* Lodgings, *or a* Furnished House.

ARTICLES OF AGREEMENT made and entered into the day of 18 , BETWEEN [*landlord*] of, &c. of the one part, and [*tenant*], of, &c. of the other part.

Parties.

Agreement.

FIRST, the said [*landlord*] for himself, his heirs, executors, and administrators, agrees to let, and the said [*tenant*] for himself, his heirs, executors, and administrators, agrees to take ALL THAT (*a*) the ground floor and the two front attics, with the back coal-cellar, of the dwelling-house of the said [*landlord*], situate in Street, in the parish of, &c. together with the use of the front kitchen and the back yard, with the appurtenances in common with the occupier for the time being of the other part of the said dwelling-house (*b*); together with the fixtures,

Parcels.

(*a*) If the agreement be for a ready furnished house, &c. say,

Ready furnished house.

"ALL THAT messuage or dwelling-house, with the coach-house, stable, out-houses, and garden behind the same, with the appurtenances, situate in Street, in the parish of , in the said county of , and late in the occupation of ; together with the fixtures &c."

(*b*) If it be the agreement, add,

For a surgeon, &c. liberty to put name on door, and to fix a bell.

"*and* the liberty of putting the name and profession of the said [*lessee*] on the front door of the said dwelling-house, in such characters, manner, and form as he shall think proper; *and also* to place and fix a bell with wires extending to either of the said front atticks, with the words 'night bell,' to be affixed near the handle, on the outside of the door of the said dwelling house;"

FOR FURNISHED LODGINGS, OR A FURNISHED HOUSE.

furniture, utensils, and things, particularly mentioned in the schedule hereunder written, FOR (*a*) the term of months, commencing from the day of now next; AT the rent of pounds for every calendar month, to be paid at the end of every calendar month, and the first payment thereof to be made on the day of now next; AND the said parties do hereby further agree, that the said [*tenant*] shall and may, from and after the expiration of the said term of months, hold and enjoy the said ground-floor, rooms, furniture, and premises from [*six*] months to [*six*] months, at the said rent, until one of the said parties shall give unto the other, in writing, calendar months notice to quit; at the end of which said term of months, or the expiration of any such notice as aforesaid, the said [*tenant*] shall and will leave the said premises and the said fixtures, furniture, utensils, and things, in as good state and condition, as the same now are, reasonable wear and tear excepted; *and also* shall and will replace such part of the glass, china, and earthenware as shall be broken, with other articles of the same pattern and equal value; *and* that the said [*landlord*] shall during the said term or time keep the said premises and furniture in good repair and condition, and replace such part of the said fixtures and furniture as shall by reasonable wear and tear be rendered unfit for use (*b*).

Term.

Rent.

Tenant to hold for a like term, until notice by one of the parties.

After notice, tenant to quit, and leave the furniture, &c. in good condition,

and to replace broken glass, &c.

Landlord to repair premises and furniture.

AS WITNESS, their hands.

(*a*) If by the week, say,

By the week.

"for weeks, to commence from the day of now next, at pounds per week, to be paid weekly;

(*b*) Sometimes in agreements for ready furnished lodgings or a ready furnished house, the following is inserted;

Landlord may distrain the goods of tenant of ready furnished lodgings.

"AND it is also agreed, that the [*landlord*] shall have power to distrain for the said rent upon any of the goods and chattels of the said [*tenant*], as often as the rent shall be days in arrear."

But this clause seems to be perfectly useless, as a landlord may distrain

FOR FURNISHED LODGINGS, OR A FURNISHED HOUSE.

the goods of a tenant of ready furnished lodgings for rent in arrear. *Newman* v. *Anderton*, 2 New Rep. 224; and indeed it seems strange how it could ever have been conceived that the remedy by distress should be lost on account of the value of the property being enhanced by the addition of a looking-glass or some other such personal chattels. In London and other towns it scarcely ever happens that any house is let without some goods being let with it, but only one rent is reserved; and with a brewhouse it is common to let the utensils; but it never was doubted that the landlord might distrain for the rent. Vide *Spencer's* case, 5 Co. 17 a. 3.

FOR A LEASE OF A HOUSE AND FURNITURE.

AGREEMENT *for a Lease of a House, with, or without the Furniture.*

ARTICLES OF AGREEMENT made and entered into the day of 18 , BETWEEN [*lessor*], of, &c. of the one part, and [*lessee*], of, &c. of the other part.

Parties.

Agreement to lease.

FIRST the said [*lessor*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*lessee*], his executors and administrators, that he, the said [*lessor*], his (*a*) heirs or assigns, shall and will, within the space of months now next ensuing, or when thereunto required by the said [*lessee*], his executors, or administrators, well and effectually by indenture, demise and lease unto the said [*lessee*], his executors and administrators, ALL THAT messuage, tenement, or dwelling-house, with the coach-house, stables, and garden behind the same, situate, &c. with the appurtenances thereunto respectively belonging (*b*), To HOLD the same unto the said [*lessee*], his executors and administrators henceforth (*or* from the

Parcels.

Term.

Underlease.

(*a*) If a lessor has only a term for years in the premises, say, "his executors, administrators, or assigns,"

Furniture.

(*b*) If furuiture be leased with the house, say, "*together* also with the use of all and singular the furni-

FOR A LEASE OF A HOUSE AND FURNITURE.

day of now next) for the term of years, AT the yearly rent of pounds, clear of all taxes, rates, and assessments whatsoever, except the land tax, the first payment thereof to be made on the day of now next. AND IT IS HEREBY AGREED by and between the said parties hereto, that in such indenture of lease there shall be contained covenants on the part and behalf of the said [*lessee*], his heirs, executors, and administrators, to pay the said yearly rent accordingly; *and also* to bear and pay his and their full proportion and share of the charge and expence of cleansing and keeping in repair the common sewer or drain for carrying off the water in Street (*or* parish) aforesaid; *and also* to keep the messuage, tenement, or dwelling-house, and premises, intended to be leased (*c*) during the said term, in as good plight and condition as the same are now in, and so deliver up the same, together with the several fixtures to the premises belonging, at the end or other sooner termination of the said term, reasonable use and wearing thereof only excepted; *and also* not at any time or times during the said term to remove, or cause or suffer to be removed from or out of the said messuage, tenement, dwelling-house, and premises, any of the said (*d*) fixtures on any account whatsoever; *and also* not to assign, lease, or underlet the said premises, or any part thereof, to any person or persons whomsoever, without the consent of the said [*lessor*], his heirs or assigns, first had and obtained in writing for

Rent.

Covenants by the lessee.

To pay rent.

To pay sewer's rate.

To repair.

To deliver up at end of term.

Not to remove fixtures.

Not to assign lease, or underlet, without consent.

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ture, in and belonging to the said messuage, tenement, or dwelling-house mentioned and comprised in the schedule or inventory hereunder written (*or* hereon indorsed, (*or* hereunto annexed), and signed by the said parties hereto,"

(*c*) If the furniture be leased with the house, say,

" and also the furniture mentioned and comprised in the schedule or inventory hereunto annexed (reasonable wear and tear excepted),"

Not to remove furniture.

(*d*) " furniture or "

FOR A LEASE OF A HOUSE AND FURNITURE.

that purpose; (*e*) or use, or exercise, or permit, or suffer any person whomsoever, to carry on or exercise the trade or business of a tavern-keeper, victualler, retailer of spirituous liquors, eating house, oyster shop, retailer of prepared coffee, tea, and other provisions, commonly called a coffee shop, butcher, currier, soap boiler, common brewer, distiller, tallow chandler, tallow melter, sugar baker, working brazier, tinman, plumber, tripe boiler or seller, dyer, smith, farrier, pipe maker or burner, caricature, print, or newspaper shop, or any other noisome or offensive trade or business whatsoever in or upon the said premises intended to be demised, or any part thereof; *and also* a proviso for re-entry on the premises on nonpayment of the said yearly rent by the space of twenty-one days next after the same shall become due, or on non-performance of any of the covenants to be contained in the said lease, on the lessee's part to be performed (*f*); *and*

Not to exercise offensive trades.

Power of re-entry,

and other usual covenants.

LEASE OF A PUBLIC HOUSE.

(*e*) If it be a *lease of a public house* by a brewer, substitute in the room of the succeeding provision, the following:

Not to be made a private house.

"*and* not to permit or suffer the said dwelling-house to be converted into a private house or shop, without the consent in writing of the said [*lessor*], his heirs or assigns; *and*

To keep orderly house.

to keep, conduct, and manage the said house in such orderly, proper, and regular manner, that the licence or certificate of the magistrates may not be taken away or refused to be renewed; *and also* to take, have, and purchase from the said [*lessor*], his heirs or assigns, and from no other person, all the table-beer, porter, beer, ale, wine, brandy, rum, gin, shrub, and all other liquors and cordials which the said [*lessee*], his executors, administrators, or assigns shall sell in or upon the said premises:"

To purchase beer, spirits, &c. of lessor.

Rent suspended or abated in case of fire, &c.

(*f*) If the agreement be that the rent shall be suspended or abated in case of fire, &c. say,

"*and also* a proviso for the suspension or abatement of the said rent during such time as the said premises, or any part thereof, shall remain useless, by reason of fire, storm, or tempest, the same to be referred to arbitration, or arbitration and umpirage, if any dispute should arise respecting the time or proportion of such suspension or abatement;

all (*g*) other usual and reasonable covenants; and that there shall also be contained in the said lease a covenant on the part of the said [*lessor*], his heirs, executors, and administrators, for quiet enjoyment of the said premises by the said [*lessee*], his executors and administrators, during the said term, upon payment of the said yearly rent, and performance and observance of the covenants to be contained in such lease on his or their parts to be performed and kept (*h*). AND THE SAID [*lessee*] for himself,

FOR A LEASE OF A HOUSE AND FURNITURE.

Lessor to covenant for quiet enjoyment.

Lessee covenants to accept lease.

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and also a covenant on the part of the [*lessor*], his heirs or assigns, to rebuild or repair, in a proper and workmanlike manner, as soon as conveniently may be, such part of the said premises as shall be damaged or destroyed by fire, storm, or tempest: *and it is also agreed*, that if the said premises should be destroyed, damaged, or injured by fire or otherwise before the commencement of the said term, this agreement shall nevertheless continue in force, and be carried into execution in the same manner, as if such event had not taken place;"

Lessor to rebuild in case of fire, &c.

Agreement to continue in force, notwithstanding fire, &c. before commencement of term.

(*g*) If the lessor has only a term for years, say,
"such other covenants (except the covenant for building) as are contained on the part of the lessee in the indenture of lease, whereby the said [*lessor*] holds the said premises; *and also* all"

Underlease.

(*h*) If it be for a *lease of a public house*, add
"*and also* a covenant, that the said [*lessor*], his heirs or assigns, shall and will during the said term, serve, provide, and send unto the said [*lessee*], his executors, administrators, and assigns, such good and palatable table-beer, porter, beer, ale, wine, brandy, rum, gin, shrub, and all other liquors and cordials, at such and the same price and prices, and of such sort, quality, and description, according to the price, as the said [*lessor*], his heirs, or assigns, shall usually and accustomably provide for and deliver to his or their other publicans, customers, or dealers; *and also* that the said [*lessor*], his heirs or assigns, shall and will, within (*ten*) days after notice for that purpose, remove and take away such of the said malt liquors, wines, spirits, and all other liquors and cordials, as shall be or become unfit

LEASE OF A PUBLIC HOUSE.

Brewer to provide good beer, &c.

and change bad beer, &c.

FOR A LEASE OF A HOUSE AND FURNITURE.

his heirs, executors, and administrators, doth hereby covenant and agree with the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors or administrators, shall and will accept such lease as aforesaid, upon the terms and conditions above specified, and execute a counterpart thereof; *and also* shall and will bear and pay the expense of these presents (and a counterpart hereof), and of such lease and a counterpart thereof, and employ such person as the said [*lessor*], his (*a*) heirs or assigns, shall direct to prepare the same. IN WITNESS, &c.

and pay the law charges.

THE SCHEDULE OR INVENTORY above referred to, (*or* to which the within-written agreement refers (*or* to which the agreement hereto annexed refers).

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for sale or consumption, in consequence of the bad quality thereof, and replace the same with others of a good and vendible quality, and in default thereof, shall forfeit and pay unto the said [*lessee*], his executors, administrators, or assigns, the sum of pounds for every such default; *and also* a proviso that the said [*lessor*], his heirs or assigns, shall not be obliged or compelled to supply the said [*lessee*], his executors, administrators, or assigns, with any of the said malt liquors, wines, spirits, or other liquors or cordials, after such time as the said [*lessee*], his executors, administrators, or assigns, shall have contracted a debt with the said [*lessor*], his heirs or assigns, to the amount of pounds, for any such malt liquors, wines, spirits, or other liquors or cordials as aforesaid, until the same debt shall be fully paid and satisfied (or reduced under that amount)."

Penalty on default.

Brewer not bound to supply beer, &c. while a debt to the amount of £ is due.

It may be often prudent, in an agreement for a lease of A PUBLIC HOUSE, *to add* the usual arbitration clause, "in case of any dispute between the lessor and lessee, either as to the quality of the spirits, &c. supplied, or any other matters or things connected with the agreement." *See the common form*, infra. INDEX tit. ARBITRATION.

(*a*) If the lessor has only a term for years in the premises, say, "his executor, administrators, or assigns,"

FOR A LEASE OF A FARM.

AGREEMENT *by the Owner of the Inheritance; or a Tenant in Tail (a); or a Tenant for Life or in Tail under a Power; or a Husband and Wife seised in right of the Wife; or by the Steward or Bailiff of the Lessor, for a* LEASE OF A FARM *for Twenty-one Years, determinable at the end of the first Seven or Fourteen Years.*

ARTICLES OF AGREEMENT made and entered into this day of in the year of our Lord

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Leases by Tenants in tail.

(*a*) By the statute 32 Hen. VIII. c. 28. *tenants in tail* are enabled to make leases for three lives or twenty-one years, which will bind their issue, but not the persons in remainder or the reversioner; and consequently the leases determine on the failure of issue in tail. Co. Litt. 44 a. Kitchen on Courts. 307, 4th ed. There are many particulars to be observed to make such leases valid, even against the issue in tail, for which see Co. Litt. 44 a & b. 4 Bac. Abr. 30, Gwil. ed. *Leases* (D) 2: and the note, *infra*, on Leases, by tenants in tail.

Since the statute *de donis*, the issue is to be considered as a purchaser, and is in, immediately from the donor *per formam doni*. *Sayle* v. *Freeland*, 2 Vent. 350. *Cavendish* v. *Worsley*, Hob. 203. *Powell* v. *Powell*, Prec. Ch. 278. 1 Eq. Ca. Abr. 265. S. C. So that, as it seems, no act of tenant in tail shall be carried into execution in a court of equity against the issue any further than at law, for this would be to repeal the statute *de donis*. *Ross* v. *Ross*, 1 Ch. Ca. 171. *Jenkins* v. *Keymes*, 1 Lev. 239. 1 Treatise of Equity, bk. 1. ch. 4, s. 20. Fonbl. ed. 5th 301. Although the issue is in the power of tenant in tail by a particular conveyance, that not being perfected, the court cannot take away the right he derives, not from the tenant in tail, but from the author of the estate tail. *Hinton* v. *Hinton*, 2 Ves. sen. 634. Therefore an agreement by a tenant in tail, for a lease or any other conveyance, although binding on him, *Ross* v. *Ross*, 1 Chan. Ca. 171. 1 Lev. 239, S. P.; yet his issue cannot be compelled to perfect it, notwithstanding the tenant in tail receives part of the consideration money, and a bill be brought to compel a specific performance, and a decree be pro-

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nounced accordingly; and he stands out all process against him to a contempt, and then dies without perfecting the agreement; *Powell* v. *Powell*, Prec. Chan. 278. *Coventry's* case, 1 Eq. Ca. Abr. 265 (B) 3. Or although tenant in tail sells at a full value, and receives the consideration money, and covenants to levy a fine, and is decreed to do it; yet dying, though in prison, and in contempt for not performing the decree; *Weal* v. *Lower*, 2 Vern. 306. or enters into articles to convey for payment of debts. *Herbert* v. *Fream*, 2 Eq. Ca. Abr. 28, pl. 34. 1 Bac. Abr. 105. (d). But if the issue do any act towards carrying the contract or agreement of his ancestor into execution, by which he consents to, or confirms it, he will be compelled in equity to perform it. *Ross* v. *Ross*, 1 Chan. Cas. 171. The only way for the ancestor to bind the issue in tail is, by a lease actually executed and made agreeably to the enabling statute, or by levying a fine or suffering a recovery.

Equitable tenant in tail.

A distinction was formerly taken between cases where the lands were entailed *de facto*, and those where there was only an agreement to entail, or a mere trust or equitable estate, which courts of equity considered as a creature of their own, and to be governed by their rules, as conscience directed; therefore, if a man, being tenant in tail in equity, had agreed to grant a lease, or bargained and sold his estate, the court would have decreed such disposition good against the issue, because a trust is not within the statute *de donis;* and as the agreement raised an equity against him who made it, they construed their own creature as a fee-simple conditional at the common law, before the statute *de donis*, which became absolute by having issue, Hargr. n. Co. Litt. 19. a. (2) & (4), and the donee whereof had thereby the power of alienating it. *North* v. *Champernon*, 2 Chan. Ca. 63, 71. 1 Vern. 13. 1 P. Wms. 91. S. C. *Carpenter* v. *Carpenter*, 1 Vern. 440. *Beverley* v. *Beverley*, 2 Vern. 131. *Bates* v. *Bayley*, 2 Vern. 226. *Sayle* v. *Freeland*, 2 Vent. 350. *Norcliffe* v. *Worsley*, 1 Chan. Ca. 234. 236. *North* v. *Way*, 1 Vern. 14. Vide 2 Vern. 133. *Otway* v. *Hudson*, 2 Vern. 583. 1 Pow. Contr. 126, 1 Treat. Equity, 303. 1 Eq. Ca. Abr. 255. pl. 2. 7 Bac. Abr. 185. *Uses and Trusts* (M).

Equitable fine or recovery.

However subsequent determinations have fully settled that an equitable entail can only be barred by a fine or recovery, which will have the same effect on a trust estate tail, as a fine or recovery by a legal tenant in tail would have on a legal estate tail. *Legate* v. *Sewell*, 1 P. Wms. 91. *et vide* 2 Vern. 552. *Harvey* v. *Parker*, 10 Vin. Abr. 266, pl. 6. *Kirkham.* v. *Smith*, Ambl. 318. *Radford* v. *Wilson*, 3 Atk. 815. *Boteler* v. *Allington*, 1 Bro. C. C. 72. *Burnaby* v. *Griffin*, 3 Ves. jun. 266. 1 Cru. Dig. 485. 2d ed. Sug. Vend. 176. 5th ed. 1 Fonbl. Treat. Equity, 304. 5th ed. And it has been long settled that a com-

18 , BETWEEN [*lessor*] (*b*) of, &c. (*c*) of the one part, and [*lessee*] of, &c. of the other part. FOR A LEASE OF A FARM.

mon recovery, suffered by a *cestuique trust* in tail, who is in possession under the trustees, will effectually bar such estate tail, and all *equitable* remainders, and the equitable reversion depending thereon; although the trustees do not join, or there be no legal tenant to the præcipe. *North* v. *Champernon*, 2 Chan. Ca. 63. 78. *Marwood* v. *Turner*, 3 P. Wms. 171. *Sir Francis Gerard's* Ca. 1 Eq. Ca. Abr. 393. *North* v. *Way*, 1 Vern. 13. *Robinson* v. *Comyn*, Cas. Temp. Talb. 167. 1 Atk. 473. S. C. 18 Vin. Abr. 207, n. pl. 2. Pigot on Recov. 104. 5 Cru. Dig. 477. s. 9. If there be a previous *cestui que trust* for life, the *cestui que trust* in tail cannot bar the estate tail by a common recovery without the concurrence of the equitable tenant of the freehold, by analogy to the rule at law. *North* v. *Champernon*, 2 Chan. Ca. 64. 3 Bac. Abr. 242. So when the equitable tenant in tail has the immediate reversion in fee, he may acquire the equitable fee simple by a fine, but if there are equitable remainders expectant upon his estate tail, it will be necessary for him to suffer a recovery; but a legal remainder cannot be barred by an equitable recovery. *Robinson* v. *Cuming*, 1 Atk. 473. *Salvin* v. *Thornton*, 1 Bro. C. C. 73. n. 7 Bac. Abr. 242. Ambl. 545. 699. S. C. *Shapland* v. *Smith*, 1 Bro. C. C. 74. *Bridges* v. *Bridges*, 3 Ves. jun. 120. *Lord Grenville* v. *Blyth*, 16 Ves. 224. *Wykham* v. *Wykham*, 18 Ves. 418. *Vide* 1 Collectanea Juridica, 214. To bar legal remainders by a common recovery, there must be a legal tenant to the *præcipe*. 1 Madd. Ch. 454. 2d ed. Where the tenant, against whom the writ in a common recovery is brought, has only an equitable estate of *freehold*, the recovery, suffered upon that equitable freehold, cannot bar a legal estate tail vested in the vouchee, or any legal remainder; for there is no exception to the rule, that a legal remainder cannot be affected by a recovery with an equitable tenant to the *præcipe*; but the converse is not true, for a legal estate in the tenant to the *præcipe* is no objection. *Marwood* v. *Turner*, 3 P. Wms. 171. *Goodrich* v. *Brown*, 2 Freem. 180. 1 Cha. Ca. 49. *Phillips* v. *Bridges*, 3 Ves. jun. 126. 128. 1 Sand. Uses, 273, 3d ed.

(*b*) If by husband and wife seised in right of the wife *, say; "and his wife," By husband and wife.

* An agreement for a lease by a husband and wife seised in right of the wife, would not be binding on the wife or her heirs, or her issue in tail, because the statute 32 Hen. 8, c. 28, only authorises "leases;" and if the circumstances required by the statute are not observed, as those leases are innovations upon the common law, and are sanctioned only by that act of parliament under certain terms and conditions; if Of legal estate.

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Consideration.

FIRST the said [*lessor*] in consideration of the rents and covenants hereinafter agreed to be paid and performed,

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those terms and conditions be not strictly pursued, the leases are void at law, and a court of equity has no jurisdiction to supply the omission. Cowp. 267; Anon. 2 Freem. 224; 1 Scho. & Lef. 71; 1 Rop. Husb. and Wife, 95. [See the Dissertation on Leases, Vol. IV. p. 326.]

Of equitable estate.

So when a married woman is entitled to an equitable freehold interest, not settled to her separate use, it is necessary that she should concur with her husband in levying a fine, in order to pass it, or to enable them to make other leases than the statutes allow husband and wife to make of her legal estates. *Vide* 1 Sand. Uses, 274, 3d ed.

Steward, &c.

(*c*) If by the steward or bailiff of the lessor, say

"(*the lessor*) of, &c. by [A. B.] of, &c. his steward or bailiff lawfully authorized† for this purpose,"

Authority to agent to contract.

† Though the contract itself must, by the statute of frauds, be in writing, *an authority* to buy or treat as agent for another, may be good and effectual without any writing. *Walter* v. *Hendon and Coæ*, 5 Vin. Abr. 524, pl. 45; *Wedderburne* v. *Carr*, in the exchequer, T. T. 1775. cited 3 Wooddes. Lect. 427. So Lord Eldon, in *Coles* v. *Trecothick*, 9 Ves. jun. 250, said it is clearly settled now, that an agent need not be authorised in writing. See *Clinan* v. *Cooke*, 1 Scho. & Lef. 22; *Barry* v. *Lord Barrymore*, *ibid*, 28, cited. [and *Emmerson* v. *Heelis*, 2 Taunt. 38.] It is, however, in all cases, highly desirable that the agent should have a written authority. Where he has merely a parol authority, it must frequently be difficult to prove the existence and extent of it; more especially where the agent is authorized by several trustees, or several persons concerned in interest, it is difficult to prove that they all concurred in giving the same authority to the agent. *Mortlock* v. *Buller*, 10 Ves. 310. In *Daniel* v. *Adams*, Ambl. 495, husband and wife having a joint power to sell an estate of the wife, gave a verbal authority to an agent to sell by auction; he sold by *private contract*, for a greater sum than the *husband* alone had written to him to say he would part with the property for: it was held, that the purchaser could not compel a specific performance. See *Charlewood* v. Duke of *Bedford*, 1 Atk. 497; 5 Vin. Abr. 522, pl. 35: *Wyatt* v. *Allen*, app. No. 9, Sug. Vend. 11. The testimony of the agent will be received with great caution against his signature as agent. If, however, at the time of signing, he make a declaration that he has no authority, his principal will not be bound. *Howard* v. *Braithwaite*, 1 Ves. and Bea. 202. 374. [See also *Schumach* v. *Lock*, 10 Moore, 39.] But although an agent is authorised to sell or lease at a particular price, yet it seems that his clerk cannot contract

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doth hereby for himself, his heirs, executors, administrators, and assigns, covenant and agree with the said [*lessee*], his executors and administrators, that he the said [*lessor*] (*d*), his heirs or assigns, shall and will, on or before

Agreement.

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without a special authority or agreement for that purpose, *Coles* v. *Trecothick*, 9 Ves. 234; which, however, need not be in writing. The principal may revoke the authority of the agent at any time before an agreement is executed, according to the statute, although the agent has previously agreed *verbally*, to sell, &c. the property: see *Farmer* v. *Robinson*, 2 Camp. 339. n. and an intended purchaser, &c. may in like manner revoke his authority to his agent to purchase, &c. As to sales by auction, see *Blagden* v. *Bradbear*, 12 Ves. 467. *Mason* v. *Armitage*, 13 Ves. 25. Sug. Vend. 88, 5th ed. Roberts on Frauds, XIII. 113. n.

Attorney should act in the name of his principal

When a person has authority, as attorney, to do any act, he ought to do it in the name of the person who gives the authority; for he appoints the attorney to be in his place, and to represent his person; and therefore the attorney cannot do it in his own name, nor as his proper act, but in the name and as the act of him who gives the authority. *Combes's* case, 9 Co. 76. b. *White* v. *Cuyler*, 6 Durnf. and East, 177; but it is immaterial whether the attorney place his own name first or last. Therefore an execution thus, "for J. B. (the principal), M. W. (the attorney), L. S." is valid. *Wilks* v. *Back*, 2 East, 142. So where an attorney enters into an agreement on behalf of his principal, the agreement should be made and signed in the name of the principal by him, as attorney: for if an attorney covenant in his *own* name for *himself, his heirs*, &c. he will himself be personally bound, though he be described in the instrument as covenanting for, and on the part of his principal. *Appleton* v. *Binks*, 5 East, 148; *Kendray* v. *Hodgson*, 5 Esp. Ca. 228. See *Duke of Norfolk* v. *Worthy*, 1 Camp. N. P. C. 337. *Bowen* v. *Marris*, 2 Taunt. 375. Sug. Vend. 42. 5th ed. [*Kennedy* v. *Gouveia*, 3 Dow. & R. 503.]

At law a power cannot be executed by attorney.

Where a man has only a particular power or authority to make leases for life or years, he cannot make leases by force of his power by letter of attorney, because he has only a particular power, which is personal to him. Lady *Gresham's* case, cited 9 Co. 76. a. *Combes's* case. *Delegatus non potest delegare.* Although perhaps in equity, for the reasons stated in the next note, an agreement for a lease entered into by the authorised agent of a person having only a power to make leases would be binding on the remainder-man; but of course it would be good as against the donee of the power for his time.

(*d*) If by husband and wife,

Husband and wife.

"And his wife, her"

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the day of now next (*e*), grant and demise to the said [*lessee*], his executors, administrators, and assigns, a valid lease in the law of ALL THOSE, &c. which said premises are more particularly mentioned and described in the schedule to these presents, To HOLD such part of the tillage ground as is now in wheat or wheat stubble, from the 13*th* day of *February* now next; the pasture ground from the 5*th* day of *April* next, and the residue of the said pre-

Parcels.

Term and time of entry.

Under a power.

(*e*) If by tenant for life, &c. under a power *, "and by virtue and in exercise of the power contained in his marriage settlement (*or*, his father's will, (*or* in an indenture bearing date on or about the day of 18 , and made between, &c.)"

Cases in which equity will supply a defective power of leasing.

* Under a *power* of leasing, a binding *contract* for a lease may be entered into; and if a *bona fide* contract be entered into, to grant a lease at a future day, it will not be deemed a lease in *futuro* against the remainder-man, if the person agreeing to grant it, live beyond the time limited for its commencement, although he die before it is actually granted; for every contract must necessarily precede the execution of it. *Shannon* v. *Bradstreet*, 1 Scho. and Lef. 52. It is only necessary that the intention to execute a power should appear clearly in writing: whether the donee of the power only covenant to execute it, *Fothergill* v. *Fothergill*, 2 Freem. 257; Lady *Beaufoy's* case, 2 Vern. 465, cited; *Alford* v. *Alford*, 2 P. Wms. 230, cited; *Clifford* v. *Lord Burlington*, 2 Vern. 379. 2 P. Wms. 668. *Marchioness of Blandford* v. *Duchess of Marlborough*, 2 Atk. 542. *Hollingshead* v. *Hollingshead*, 2 P. Wms. 229, cited. *Coventry* v. *Coventry*, Francis's Maxims, last case, 2 P. Wms. 222. Gilb. Eq. Rep. 160. 1 Str. 596. 9 Mod. 12; 10 Mod. 469, dict. *Sargeson* v. *Sealey*, 2 Atk. 412. 4 Cru. Dig. 275. 2d. ed.; or by his will desire the remainder-man to make up a deficient jointure estate, *Vernon* v. *Vernon*, Ambl. 1; or merely enter into a contract, not under seal, to execute his power, *Shannon* v. *Bradstreet*, *ubi supra*; or by letters promise to grant an estate which he can only do by an exercise of his power, equity will supply the defect. *Campbell* v. *Leach*, Ambl. 740. App. No. 13. Sug. Pow. 673. *Ibid*, 353, 589. 2d ed. *et vide* 4 Cru. Dig. 267, 2d ed. 1 Madd. Ch. 369. 2d ed.

Leases under a power, bind the remainder-man or reversioner.

There is a material distinction between leases by tenant in tail under the 32 Hen. VIII. c. 28, and leases by tenant for life or tenant in tail under a power of leasing contained in a deed, will, or private act of parliament, because leases under a *power*, continue, and are binding, on the remainder-man, or reversioner, notwithstanding the determination of the estate for life or in tail. [See as to powers under acts of parliament granted to vicars, *Att. Gen.* v. *Moses*, 2 Madd. 294. *Att. Gen.* v. *Wray*, 1 Jacob, 307.]

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mises from the 12*th* day of *May* next, for the term of twenty-one years from the said days respectively, determinable by either party (*or* by the lessee) at the end of the first seven or fourteen years, on giving (*one*) year's previous notice in writing, AT the yearly rent of pounds; AND Rent.
AT the additional yearly rent of pounds, for every Additional Rent.
acre of meadow or pasture land, which the said [*lessee*] his executors, administrators, or assigns, shall break up or convert into tillage, and so in proportion for less than an acre: the said rents to be paid quarterly (*g*); and the first quarterly payment of the said rent of pounds to be made on the day of now next, and the first quarterly payment of the said additional rent to be made on the first of the said days which shall happen next after such breaking up or converting into tillage, and thence to be respectively continued, free from all taxes, rates, assessments, and deductions whatsoever (the land tax and the yearly rent of pounds payable to the lord of the manor only excepted, and which it is hereby agreed shall be paid by the said [*lessor*] his heirs and assigns). *Which* said indenture of lease, and a counterpart thereof, Lease and counterpart at lessee's expense.
are to be prepared by the solicitor of the said [*lessor*], at the costs and charges of the said [*lessee*]; and are to contain the several covenants, clauses, provisoes, agreements, Covenants to be contained in the lease.
and restrictions usually reserved and contained in leases of farms in the neighbourhood (*h*); (*or* in the indenture of lease dated the day of 18 , whereby now holds the said farms and lands;) *and also* the following covenants on the part of the lessee, his heirs, executors, administrators and assigns, that is to say, to keep the tillage land of the said premises in due course Course of husbandry.

(*g*) "except the last quarter's rent, which it is hereby agreed shall be paid on the 25*th* day of *March*, before the expiration of the said term;" Last quarter's rent to be paid before expiration of term.

(*h*) If by a tenant in tail,

"and such other covenants and clauses, as are required by the statute [32 Hen. VIII. c. 28] to make leases valid against the issue in tail;" Tenant in tail.

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of husbandry, without setting potatoes, in larger quantities than for the use of himself and his family; and without sowing any rape seed, mustard seed, or turnip seed; *and* to keep and preserve the buildings and gates belonging to the said premises, in good and sufficient repair, during the said term (*except* the walls, timbers, and roofs, and except when the said buildings shall be damaged by fire, tempests, or other inevitable accidents; in all such excepted cases and particulars the said messuages and buildings to be repaired by the said [*lessor*]); *and* yearly to cleanse and scour sixty roods of hedging in the most necessary parts of the said premises; *and* not to cut, prejudice, or destroy any of the trees, thorns, and quicksets growing in and upon the said premises, except such as shall be necessary for the repairs of the hedges, and those only at seasonable times of the year; *and* to the utmost of his power to preserve the said trees, thorns, and quicksets; *and also* during the said term, with his cattle to eat and consume upon the premises the hay and straw that shall yearly grow thereon; *and* to lay and spread all the manure which, during the said term, shall arise from the said farm, upon the lands and grounds which shall be plowed and had in tillage, in a good and husbandry like manner; *and* to permit and suffer the said [*lessor*], his heirs and assigns, and his and their servants, tenants, and labourers, at the usual times, in the spring next before the expiration of the said term, to enter upon the said premises or any part thereof, for the purpose of making the same fit for husbandry; *and* to insure the buildings on the said premises in the sum of pounds, in the names of the said [*lessor*] (*a*) and the said [*lessee*], in some or one of the public offices of insurance, in London or Westminster, and to produce the receipts for the same; *and* (*here mention the other special covenants*); *and also* a covenant on the part of the said [*lessee*] his executors (*b*), adminis-

Covenant to keep the premises in good repair.

To cleanse hedging.

Not to cut trees, &c.

To preserve trees, &c.

To cousume hay and straw on the estate.

To spread manure.

To permit lessor in the spring of the last year of the term to come upon the estate to prepare lands.

To insure.

Special covenants.

Not to assign or underlet.

Husband and wife.

(*a*) If by Husband and Wife,

"and his wife, her heirs and assigns,"

Scheme to avoid the ope-

(*b*) It has been suggested as an experiment to be tried, when particular circumstances of hardship may render it expedient to avoid the

FOR A LEASE OF A FARM.

trators, and assigns, not to assign, underlet, or part with the possession of any part of the said premises (except to a legatee or legatees, executor or executors, who shall take the same without giving any valuable consideration, or without any collusion or artifice to evade this provision), unless with the express licence of the said [*lessor*], (*c*) his heirs or assigns, in writing for that purpose (*d*); *and also*

unless with license. Power of re-entry.

operation of this restriction, for the lessee to name certain persons in his will, who may contract to sell, and appoint the purchaser when ascertained, the *executor, quoad* the term. 2 Pres. Conv. 192. *et vide* Shep. Touchs. 144. *Parry* v. *Harbert*, Dyer, 45. b. But there will be an intestacy *quoad* the term, until the person is ascertained: Godolphin O. L. 78. 3 Bac. Abr. 28. and the obstacles to the validity of this contrivance seem insuperable, because it is on the face of it an attempt, by a quibbling evasion of the words and spirit of the restriction, to do that by circuity which could not be done immediately; and it cannot be doubted that a landlord would endeavour to take advantage of it as a forfeiture; but if he did not, considerable difficulty would be found in proving both wills, and apportioning the probate duty on each, and paying the legacy duty at the Stamp-office; and a question would probably arise, whether the executor *quoad* the term, would be liable to the legacy duty; besides, it seems the purchaser could not safely pay the purchase money to the executors of the general will, unless the testator expressly declared that their receipts should be sufficient discharges, which in such a case would be necessary, as the persons beneficially interested might be infants, &c. and incapable of receiving it. This experiment is not likely to be tried. In *Lord Windsor* and *Burry*, a lease was made to *Burry* upon condition that he should not assign his term without the assent of *Lord Windsor; Burry* devised his term to his son and wife, and made them his executors: and in that case it was said, that if they had not been executors the condition would have been broken. n. Dyer 45. b. See *Knight* v. *Mory*, Cro. Eliz. 60. *Berry* v. *Taunton*, Cro. Eliz. 331. Dyer, 45. b. (3). [See also Vol. IV. 365.]

ration of the restriction against assigning without license.

(*c*) If by Husband and Wife,

"and his wife, her heirs or assigns,"

Husband and wife.

(*d*) This should always be mentioned, either affirmatively or negatively, according to the intention of the parties.

Much difference of opinion has existed, whether under an agreement for a lease with the common and usual covenants, a lessor is entitled to have inserted in the lease a covenant not to assign without license. The greatest modern judges have differed on the subject. Although Lord

Proviso against assignment, &c.

FOR A LEASE OF A FARM.

a condition giving a power of re-entry, on the bankruptcy or insolvency of the said [*lessee*], his executors, administrators, or assigns, or on his or their suffering the said lease to be taken in execution, or doing any other act whereby the premises may become assigned or assignable, or on his or their breach or non-performance of any of the covenants, conditions, or agreements to be contained in the same indenture of lease; *but* the said [*lessor*] shall

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Eldon has determined that an agreement for a lease of a *house* for 21 years *with usual covenants,* does not include a covenant against alienation without license, *Church* v. *Brown,* 15 Ves. 258. yet in *Boardman* v. *Mostyn,* 6 Ves. 471, he admitted, that if an agreement were to grant a *farm* lease, *with the usual and customary covenants of the neighbourhood,* what such usual and customary covenants are, might be made the subject of inquiry before the master.

Cases on the point.

Under these circumstances, and as many persons may not have at hand the works in which all the cases on this subject are reported, a statement of them, with the judgments of the courts, may not be unacceptable.

Henderson v. *Hay,* 3 Bro. C. C. 632. [Eden's edit.] Covenant not not to assign without license, held not to come within a contract to grant a lease with common and usual covenants.

The plaintiff, being assignee of a lease of a *public-house,* without any covenant restrictive of alienation without license, agreed with the owner of the land, for the grant of a lease of the same, with other premises, *upon common and usual covenants.* A lease was accordingly prepared, which the defendant approved, but the defendant's solicitor afterwards inserted a covenant that the plaintiff should not assign without license from the grantor. The plaintiff filed the present bill for a specific performance of the former contract, by the grant of a lease without such restrictive covenants.

Lord *Thurlow* chancellor, said, "common and usual covenants must mean *covenants incidental* to the lease. That though the covenant not to assign without license, might be a very usual one, as he believed it was, where a brewer or vintner let a public house, that would not make it a common covenant."

It was referred to the master, generally, to prepare the lease, without any direction to omit the clause; but with a declaration that the defendant has no right to have a clause inserted, restraining alienation without license.

Morgan v. *Slaughter,* 1 Espinasse, Nisi Prius Cases, 8. Easter Term,

An action of *assumpsit* brought to recover the penalty of 50*l.* for breach of an agreement.

The agreement stated in the declaration was, "That the defendant had agreed to assign to the plaintiff all his interest in a lease of a public

house, of which thirteen years were unexpired, and his good-will in the trade and business carried on in it, in consideration of 200*l.* and it was further agreed, that the lease should contain *none but fair and usual covenants;* and each party bound himself to the performance under a penalty of 50*l.*

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33 Geo. 3. Covenant in a lease not to assign or underlet, without leave of the landlord in writing, held to be a fair and usual covenant.

The facts of the case were, that the defendant was possessed of such a lease, and for the time mentioned; but not having the lease by him at the time he entered into the agreement stated in the declaration, he had made it part of the agreement, that when the lease came to be assigned, it should be found to contain none but fair and usual covenants.

The breach assigned in the declaration was, "That the lease did contain a certain covenant," viz. "That the lessee should not alien, assign, or under-let the premises or any part of them, without leave of the lessor in writing for that purpose, first had and obtained:" and then averred, that this was not a fair and usual covenant, and so that the defendant could not perform his agreement.

The counsel for the defendant insisted, that the covenant was a fair and usual one, adopted in all leases, from the times of which there are any reports, and cited to that effect *Dumpor's* case, 4 Co. 119 a. where a question arose on [a condition similar to] this very covenant, whether the lessor, having once permitted an assignment, had not for ever dispensed (*a*) with the covenant [*read* condition]. The plaintiff's counsel relied on *Henderson* v. *Hay.*

Lord *Kenyon* said, he could not entertain a doubt concerning this being a fair and usual covenant. That it was a fair covenant as providing properly for the interest of the party demising; and as to its being a usual one, that it sufficiently appeared to have been a usual one so long since as the case cited by the defendant's counsel, and that he had never seen a lease properly drawn without it. That the plaintiff had therefore no cause of action, as the covenant was a fair and usual one, and the defendant had always been ready to assign the lease, in pursuance of the agreement. His lordship therefore directed a nonsuit.

BILL for a specific performance of a parol agreement, partly performed, to grant a lease of a farm for twenty-one years, "with the usual and customary covenants in the neighbourhood." Lord Eldon said the point as to assigning or underletting, must be the subject of inquiry as to the usual and customary covenants of the neighbourhood.

Boardman v. *Mostyn*, 6 Ves. 467, 471.

BILL to have a specific performance of an agreement for the lease of a public house at *Leeds.* The agreement was for a lease, "with all

Folkingham v. *Croft*, 3 Ans-

(*a*) [This case, and the subsequent cases on the same point, are fully stated and considered, Vol. IV. p. 55 & 366. *Ed.*]

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truther, 700. Hil. 36 Geo. 3, on an agreement for a lease, "with all usual and reasonable covenants:" a covenant not to underlease or assign, held to be implied, where the custom of the place is not generally against it.

usual and reasonable covenants commonly inserted in leases of the same nature." The plaintiff, the lessee, tendered a lease to be executed by the defendant. The defendant objected to the draught for not containing a covenant, on the part of the lessee, not to assign or underlease without license. By the evidence it appeared, that there was no regular local practice upon the subject, it being equally common in such leases to insert or to omit the covenant in dispute.

Plaintiff's counsel relied on *Henderson* v. *Hay*. Defendant's counsel cited *Morgan* v. *Slaughter*.

The case stood over for judgment from Michaelmas to Hilary Term, when the opinion of the court was delivered by

Macdonald, Chief Baron.—If this case came before us without any authorities, we should not find much difficulty in deciding upon it; the covenant in question is very old in the practice of the law, being recognised as well known in Lord *Coke's* time; and it is now so generally adopted, that a lease made without such a covenant would be considered by every body as improvidently drawn.

A doubt is, however, introduced by the opposite decisions which have taken place upon the subject. In *Henderson* v. *Hay*, Lord *Thurlow* considers it necessary, by the terms of the agreement, that the covenant inserted should be incidental to the lease, that is to say, that it should be quite of course in such a lease; and his decision finds that this covenant is not incidental. The other case was decided by Lord *Kenyon*, having that decision before him; and therefore, although only a case at *Nisi Prius*, is entitled to great attention.

Upon the whole we are of opinion, that this covenant, being now so long established in common practice, may fairly be considered as a common and usual covenant to be inserted in leases. The bill must, therefore, be dismissed; but, as the opposite decisions upon the subject raised a case of fair doubt for the plaintiff to bring into court, he ought not to pay costs.

Brown v. *Raban*, 15 Ves. 528.

Bill for a specific performance of an agreement for a lease, "with usual covenants." The defendant insisted upon the insertion of a covenant against assigning or underletting without consent, as a usual covenant. Sir W. *Grant*, Master of the Rolls, *June* 2d. 1808.—The general question must be decided in this case; as there are no particular circumstances. Though executors and assigns are not mentioned, whatever interest the plaintiff took he could assign, unless prevented by the covenant. *August* 5th.—The only question in this case is, whether under an agreement for usual covenants, a covenant against assigning without license is to be inserted. There are conflicting authorities upon that point. If it was to be decided for the first time, I should be disposed to agree with the opinion of Lord *Thurlow*, in the case of *Henderson* v. *Hay*, that the construction ought to be such covenants as are incidental to the lease; but Lord *Kenyon* having expressed his dissent

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from that opinion, and the Court of *Exchequer* having upon full consideration over-ruled it, I rather think, the understanding of the profession now is, that this is a usual covenant; and is to be inserted, where there is an agreement for common and usual covenants. The case of *Henderson* v. *Hay* appears by the *Register's* book to have been ultimately compromised; a petition of re-hearing having been presented by the defendant; and the bill being afterwards by agreement dismissed without costs.

After this opinion was delivered, the case of *Church* v. *Brown*, then depending before the *Lord Chancellor*, was decided, after a communication between his *Lordship* and the *Master of the Rolls*; upon which it was agreed, that the plaintiff in this case should take a lease without the covenant.

Post, 31.

Jones v. *Jones*, 12 Ves. 186. Whether under an agreement for a lease, containiug all proper covenants, a covenant against assigning or underletting should be included—*quære.*

Bill brought in 1806 for the specific performance of an agreement made 1761, to grant a lease of several houses, at *several* rents, amounting in the whole to 70*l.* during *three lives*, containing all proper covenants.

The defendant's answer insisted upon the provision, that the lease was to contain all proper covenants, which would according to the usage of the neighbourhood restrain the lessee from committing waste, or letting; and would compel the tenant to keep the premises in good, substantial, and tenantable repair; and would have made a reservation of all timber trees, wood and underwood, coal-mines, &c. and would have imposed a forfeiture in case of the breach of any of those covenants. The answer farther insisted, that the tenant had permitted and committed waste; that the land had been over-cropped, and managed in a very unhusbandlike manner; and the tenant had worked coal and culm, and underlet; and that these acts, according to the usual covenants in leases of lands in the neighbourhood, would have been a forfeiture of the lease, if any had been in existence. (*a*)

By a farther answer to the amended bill the defendant stated, that, in case a lease had been granted, it would have contained a proper covenant on the part of the lessee, not to assign or underlet without license of the lessor, his heirs and assigns, and a power for the lessor, his heirs and assigns, to re-enter in case of a breach; and insisted that by underletting and by other acts and omissions, the tenant would have committed a forfeiture.

The defendant went into evidence of the usage of the neighbourhood to insert a covenant against underletting, and of waste committed.

Sir W. Grant, Master of the Rolls.—It is admitted, that this court

(*a*) [A court of equity will not decree a specific performance, when acts have been done by the lessee, which, had the lease been granted, would have amounted to a forfeiture. *Weatherall* v. *Gearing*, 12 Ves. 504, and Vol. IV. p. 342. *Ed.*]

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will never decree the specific performance of an agreement, if it is clear, that covenants must of necessity be introduced into the instrument, to be executed, that the party resisting the performance may immediately take advantage of, to deprive the other of all benefit from that instrument. But, it ought to appear clearly, that such will be the case: otherwise the proper, and the safest course would be to direct the execution; and then allow the other to avail himself, if he can, of any breach of covenant; for that question, whether a covenant has been broken, or not, if there is any doubt of the fact, is more proper for the determination of a court of law and a jury. We know, that a covenant may according to the strict letter be broken, and yet no recovery can be had in any action upon the covenant. Many circumstances enter into the consideration, and may weigh with a jury. Many things amount to a waiver of the covenant, or forfeiture, implied or expressed. Wherever therefore there is the least doubt, whether the covenant has been broken or not, the court ought not to preclude the inquiry by denying the relief that is prayed.

Admitting it to be clear in this case, that there must be a covenant against underletting, and that the defendant must recover for a breach of that covenant, it would be nugatory to decree the execution of a lease. There seems however to be some degree of doubt with reference to each of these questions. I own, notwithstanding the decision in the Court of Exchequer, and the *dictum* of Lord *Kenyon*, I think there is great reason in the opinion of Lord *Thurlow*. The word "proper" admits different senses. There is no covenant almost, which a landlord can propose, that, generally speaking, could be called an improper covenant; for he has a right to let his land upon any terms he may think fit to propose; and there are many covenants, not usual or common, that could not be objected to. But there are many covenants, though proper, that do not naturally flow out of the contract. The contract, *Locatio et Conductio*, does not naturally lead to many covenants, that have now found their way into most leases; and cannot be said to be improper in many of them. But that cannot be the sense with reference to the insertion of this covenant upon the expression in this agreement. It cannot mean these covenants, which would not be unreasonable. It must mean such as are calculated to secure the full effect of the contract.

Morgan v. *Slaughter*, 1 Esp. N.P. c. 8. ante, 24.

Dumpor's case, 4 Co. 119.

In the case before Lord *Kenyon* the words were "fair" and "usual"; and it was said, this appeared to be a usual covenant from the question, that had arisen in old times upon the construction of such a covenant, whether an alienation by license determines the condition. That is not a very good reason to shew, that such a covenant is common in practice. At this day it certainly is. In this instance there is no reference to the usage; the reference is only to the propriety. If that question

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had arisen before any decision had been made, subsequent to that of *Henderson* v. *Hay*, I should be much inclined to think with Lord *Thurlow*, that the meaning is incidental covenants, not collateral covenants; which it might be very wise to impose, and to which many tenants would not object; but which ought to be the subject of treaty and separate agreement; not necessarily flowing from the agreement to let and to take. Therefore I am not of opinion decidedly by any means, that the master must introduce into the lease a covenant against under-letting; and my doubt upon that is a sufficient ground for not decreeing against the plaintiff in the first instance. A reference to the master will leave it open to farther discussion.

3 Bro. C. C. 632. ante, 24.

But that is not the only doubt upon this case. It appears, though not clearly, from the answer, that there had been an under-letting in the time of the former proprietor. That I collect, rather than that it was a recent under-letting. This question then arises; whether, supposing such a covenant ought to have been introduced into the lease in 1761, the fact of under-letting, acquiesced under by the landlord, would not amount to a waiver; and, whether he could resort to the covenant again. It is determined, that such a covenant (*a*) is at an end by a licence once granted. That question will deserve consideration, when the fact is ascertained, what has been the nature of the under-letting, and the conduct of the landlord, whether the covenant has not been waived; and upon that ground, whether it ought now to be introduced: independent of the other point, whether it ought originally to have been inserted. This is not therefore that clear case of a decree, that would be nugatory, to entitle me to say no lease ought to be executed, as it would be, if the party could immediately have gone to a court of law to avail himself of the forfeiture.

Covenant against assigning without license, determined by a license once granted.

Dumpor's case, 4 Co. 119.

(*a*) *Quære*, read condition.

Therefore direct the master to settle a lease according to the agreement of the 19th June, 1761, without prejudice to the question, whether the plaintiff is entitled to a specific performance of the agreement.

[See on this judgment, 31.]

Bill for a specific performance of an agreement for the lease of a *farm* for *three lives*, after specifying many covenants and clauses added, "and such other *clauses* as are usual in such cases:" the defendant, the landlord, insisted that the covenant against *assigning* or *underletting* without license was a usual and proper covenant. Sir *William Grant*.—It seems to me, that this case may be determined upon its own ground, without any reference to the general question, which is the subject of those conflicting authorities that have been cited.

Vere v. *Loveden*, 12 Ves. 179. Whether an agreement for a lease with usual covenants, includes a covenant against assigning or underletting without licence —*quære*.

In the case of *Jones* v. *Jones*, 12 Ves. 186, *ante*, 26. I expressed the inclination of my opinion upon that general question: but it is not necessary to enter into it upon this occasion. This is not a mere agreement for a lease, with proper and usual covenants, but it is an

In this instance, upon the particular construction of the agreement for

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the lease of a farm, the words "such other clauses as are usual in such cases," held not to have that effect.

agreement which contains in great detail the terms which the lease is to contain; and it seems to me to be drawn with great method and apparent skill. It is to be observed, 1st, that the lease is to be granted to the plaintiff, "his heirs and assigns," for three lives. I do not say, that necessarily excludes a covenant against assigning without license; but I should require to be clearly satisfied that the intention was to introduce a covenant, to have the effect of preventing any assignment without license of the lessor.

The agreement proceeds then to state the premises; then the rent; then the exception and reservation out of the lease; then the covenants which the lease is to contain; declaring that it is agreed, that in the said lease shall be contained covenants by, and on the part of the tenant, his heirs, executors, administrators, and "assigns." It then goes on to specify all the covenants usually introduced into leases. When that part is terminated, it then goes on to other matters; declaring, that lastly it is agreed, that the lease shall take effect in possession from the making thereof, determinable on the lives aforesaid; and then follows the passage upon which the question arises: "and therein shall be contained a clause of re-entry by the landlord for non-payment of the rents, duties, and services to be therein reserved, or for breach of any of the covenants on the tenant's part therein to be contained, and such other clauses as are usual in such cases."

The connection of these last words is, with the clause of re-entry, mentioned immediately before. The construction, therefore, ought unquestionably to be, clauses of the same kind as that, with which those words are connected. The agreement had already provided what the covenants should be: it then proceeds to state, what the security shall be: re-entry for breach of any of those covenants; and adds, "such other clauses as are usual in such cases." Then, if there be any clause to give effect to that security, there is a right to such clause. But it cannot be contended, that it was meant here to go back to the subject of the covenants, which they had concluded and passed from, to a new subject; and this is connected naturally with that new subject; security for the performance of the covenants. It would be a construction against the obvious meaning to say, the parties thought here of such a very material covenant, affecting the whole interest as to which they were bargaining, *viz.* whether the lease should or should not be assignable; and that they conceived, that there was no better way of determining that than under this obscure clause.

This is not within the cases, where the agreement is totally silent as to all the covenants to be contained in the lease, and expresses only that it is to contain the usual covenants. There a fair question arises: What are the usual covenants? The case of *Jones* v. *Jones*, does not bear upon this; for there the agreement was only to execute a lease

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with all proper covenants: none whatever were specified. It was clear, if a bill had been filed immediately, a reference, to determine what the lease ought to be, and what the covenants ought to be, would have been of course. But the defence set up was, that if the lease had been executed, it must have contained certain covenants; and the defendant specified several covenants that must have been contained in it, according to the agreement, every one of which, it was contended, had been broken. The lease, therefore, would have been forfeited, if it had been granted at the date of the agreement. Therefore I had either to direct the reference, or to draw out myself the draft of a lease, in order to see what covenants it would have contained, and then to apply the evidence, to see whether any of those covenants had been broken; which I thought was not the business of the court, but was proper for the master; and then, the lease being settled, I could apply the evidence, to determine whether the covenants had been broken; in order to guide my judgment upon the point, whether it was fit or not, that the agreement should be performed; and, I think, that was the proper decision. But some words have crept into the decree, making it apparently inconsistent with itself, and repugnant; that the master should settle a lease, to be executed without prejudice to the question, whether the plaintiff is entitled to a specific performance of the agreement. That undoubtedly was not my intention; which was only, that the master should prepare such a lease as was fit according to the agreement, leaving the question open, whether the agreement should or should not be executed. There the parties had not come to any point; for the question, what the lease should contain, was entirely open. Here they have come to a point. There is nothing in difference between them but this single covenant.

Therefore, without entering into the consideration, whether the judgment of Lord *Thurlow* was right, or that of the Court of *Exchequer*, I may in this case do what Lord *Thurlow* did; make a declaration that this particular covenant, insisted on by the defendant, ought not to be introduced into the lease. But this decree must be without costs.

T. W. of C. grocer, entered into an agreement in writing, the 3d of December, 1798, with the plaintiffs, C. and U. to grant them a lease for *twenty-one* years, from Christmas next, of a *house*, warehouse, and other premises in C. at the yearly rent of 40*l.* clear of taxes, except the land-tax; and the plaintiffs agreed to accept the said lease, and to pay the rent; which lease it was agreed should contain a power for the plaintiffs to determine the lease at the expiration of the first seven or fourteen years, on notice; and the lease was to contain a

Church v. *Brown*, 15 Ves. 258. Under an agreement for a lease, it was held that the lessor is not without express stipulation entitled to a cove-

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covenant on the part of W., that *he* should not, at any time within ten years set up, exercise or follow, the trade of a tea-dealer or grocer, within four miles from C.; but should, on the contrary, render his assistance to the plaintiffs in the business.

nant restraining alienation without license, as a proper and usual covenant.

In pursuance of the agreement, in January, 1799, the plaintiffs entered; and carried on the business of a grocer in the premises, in partnership; until they agreed to dissolve the partnership; that C. should continue the business on his separate account, and the lease should be granted to him alone. W. afterwards sold the premises to B. the defendant, a *grocer*, in C., in fee.

The bill, filed in November, 1803, prayed, that the defendant may be decreed to execute a proper lease, conformable to the agreement.

Under a decree, directing the master to settle a lease, a draft was carried in by each party, varying only in this respect—that the draft proposed by the defendant, extended the proviso for re-entry for non-payment of rent, or breach of covenants, to the following case: viz. if C. and U. or either of them, their, or either of their executors or administrators, shall assign over this present indenture of lease, or their term or interest therein, or any part thereof, or demise, let, or part with, the demised premises, or any part thereof, to any person or persons whomsoever, without the licence of B. his heirs or assigns, in writing, first obtained; or if C. and U. or either of them, &c. should become bankrupt, or make any assignment for the benefit of their or his creditors.

The master's judgment being against the insertion of that clause, an exception was taken to the report.

Lord *Eldon*, chancellor.—I came into court with an extremely strong opinion that this covenant could not be inserted in the lease; but my mind is most seriously affected, on the one hand, by the very strong reasoning of the *Master of the Rolls* in the two cases that have been mentioned; and on the other, by the communication, that notwithstanding that reasoning, the *Master of the Rolls* considers this point bound down by the decision of Lord *Kenyon*, at *Nisi Prius*, and that single case in the Court of Exchequer.

Vere v. *Loveden*; *Jones* v. *Jones*, 12 Ves. 179, 186; *Morgan* v. *Slaughter*, 1 Esp. N. P. Ca. 8. *Folkingham* v. *Croft*, 3 Anstr. 700.

No one will suspect me of not giving all due weight to any opinion of Lord *Kenyon*; but I must know a great deal more than I do, before that determination at *Nisi Prius*, will decide my judgment upon such a point; and, as to the other case, I have not yet had an opportunity of learning any reasons that I can represent as satisfactory to my own mind. The case of *Henderson* v. *Hay* may, as it is said, not be an authority in one sense; but, that it was Lord *Thurlow's* judicial opinion, and would have been his decision, if it had been necessary to decide it, I have no doubt; and I am much misled, if that learned

3 Bro. C. C. 632.

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lord, who was very apt to give his peculiar attention to legal subjects, and after he had decided upon them, ever altered his opinion under the impression of any contrary opinion or reasons that he had received.

Suppose this point altogether unprejudiced by decision. There are different sorts of landed property, known to the law: land in fee-simple, and leasehold property: I am not at present alluding to copyholds. If a man covenants to sell a fee-simple estate, free from all incumbrances, and says no more, it is clear that covenant carries *in gremio*, and in the bosom of it, the right to proper covenants. Why? Because that sort of engagement has in all times been carried into execution in a form and mode, which alter most materially, substantially, and importantly, the effect of the mere conveyance. If no more is done than the agreement imports, the conveyance contains express covenants: the words, operating warranties, and obligations, which it was not understood between the persons contracting that the one was to undertake, and the other to have the benefit of; and accordingly it is perfectly settled by the law, what are the covenants, as applied to the case of a vendor, who was himself a purchaser for valuable consideration, or who took by descent, or by purchase, but not for valuable consideration; and, though the agreement, if literally executed, would carry all the extensive obligations, to which the legal warranties flowing from the words would bind the vendor and his heirs, yet it cannot be carried into execution without express covenants, substituted for, and limiting the implied covenants. In such a case, the law would determine according to *Henderson* v. *Hay*, what are usual covenants.*

Under a general agreement to sell a fee simple estate, free from incumbrances, the purchaser is entitled to various covenants, according to the nature of the vendor's title.

With regard to leasehold estates, I should lay no stress upon the word "assigns;" if the lease was to be made to the lessee, his executors or administrators, his assigns being included in himself; and the right to assign, unless restrained, being incident to his estate. The letter of the agreement, however, would not in any degree determine

Power of assignment incident to the estate of a lessee, without the word "assigns," unless expressly restrained.

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* The usual covenants upon the sale of an estate in fee-simple are, that the vendor is seised, and has power to convey in fee; for quiet enjoyment; that the estate is free from incumbrances; and for further assurance. The vendor, if he was himself a purchaser for valuable consideration, delivering or covenanting to produce, his title deeds, covenants against his own acts only; if his title is by descent, by devise, or otherwise as a purchaser not for valuable consideration, he covenants against the acts of the last purchaser; or, at least, of the person immediately preceding him. See *Lloyd* v. *Griffith*, 3 Atk. 264. *Wakeman* v. *The Duchess of Rutland*, 3 Ves. 233. 504. 8 Bro. Parl. Cas. 145.—[2 Bosan. & Pull. 22, and Sugd. Vend. 468. 7th ed.]

Usual covenants on the sale of a fee-simple.

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the form of the conveyance. The effect of the lease in the warranties and obligations, as arising out of the words of the lessor and lessee "yielding and paying," and under the execution of their agreement by the court, is perfectly different; the latter including the covenant for quiet enjoyment, and in many other respects the mutual obligations of both with reference to each other being by the express covenants very materially varied. Before the case of *Henderson* v. *Hay*, therefore, upon an agreement to grant a lease, with nothing more than "proper covenants," I should have said, they were to be such covenants as were just as well known in such leases as the usual covenants under an agreement to convey an estate: and, though the word "incidental" is not very precise, I conceive Lord *Thurlow's* meaning to have been, that the party had a right to those covenants that would be inserted in the execution of an agreement for a lease, arising out of the general well known practice as to such leases; and not contradicting the incidents of the estate, belonging to a lessee: one of which is the right to have the estate without restraint, beyond what is imposed upon it by operation of law, unless there is an express contract for more.

3 Bro. C. C. 632. Execution of an agreement for a lease with proper covenants, viz. according to the general practice as to such leases; and not contradicting the incidents of the lessee's estate; one of which is the right to have it without restraint, except what is imposed by law, unless an express contract for more.

How does the history of the law with reference to this subject stand? There may be a covenant for almost any thing; and this covenant against alienation without license is as old as *Dumpor's* case: but how does the fact, that there was such a covenant in that case, where it was held to be gone by alienation with license, prove, that this is a usual general covenant in a lease? The conclusion is rather the other way; that this is a special and particular covenant. Consider how this grows. This covenant, which is represented to be usual, would not prevent under-letting. Then is a covenant against under-letting a usual covenant? and is it proved to be so by the authorites, that it is not restrained by the other covenant? Farther, if the landlord has a covenant against both assigning and under-letting, the tenant might by an agreement, neither assigning nor under-letting, put another person in possession of the premises; and parting with the possession in that manner would not be a breach of those covenants. Is a farther covenant, therefore, not to part with the possession of the premises, to be given, as a usual covenant? That would not have restrained the tenant from parting with a part of the premises: these covenants having been always construed by courts of law with the utmost jealousy, to prevent the restraint from going beyond the express stipulation. The court will have to consider, whether all these covenants are also included under the terms "usual and proper covenants," in the construction of an equitable agreement, where the law would regard the instrument with that jealousy.

4 Co. 119.

Covenant restraining assignment of a lease would not prevent under-letting.

Covenants restraining lessee from alienation without license, construed with jealousy.

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Proper covenants implied in an agreement for a lease; as connected with the character and title of the lessor.

Independent therefore of the authorities, I should have said, that the meaning of the parties to a contract for a lease was, that there should be proper covenants; and that the law implies what they are, as connected with the character and title of the lessor: covenants in this sense incidental, as regulating the obligations expressed and implied; not in contradiction to the quantity of interest, which the demise itself without special words was by the agreement to give to the lessee. The case of *Henderson* v. *Hay*, in its circumstances, shews what reliance is to be placed upon this word "usual." The assignee of the lease of a public house, which lease contained no covenant restraining alienation without license, contracted for a lease, not only of the public house, but of other premises also. It was a case therefore, in which, not only the original lessor had no idea of such a covenant, but it could not relate to the public house only; and it was as fair to argue, from the nature of the other premises, which were part of the subject of the demise, as from the nature of the public house. Lord *Thurlow* however conceived, that this agreement to demise such an interest upon common and usual covenants, meant only, that an agreement to give an interest for twenty-one years in equity, gave it to the party, his executors, administrators, and assigns; and that the covenants were to be such as would not break down the extent of that interest contracted for.

3 Bro. C. C. 632.

In the case before Lord *Kenyon*, the agreement was for fair and usual covenants; but before the case of *Henderson* v. *Hay* there is no one instance, that such a covenant as this was conceived to fall within the description of usual covenants. *Dumpor's* case proves no more than the fact, that there was in that instance such a covenant; not, that it is a usual covenant, and on that account to be inserted in all leases. I am perfectly unable to follow that sort of reasoning. The inference from that case appears to me to be rather the other way. It is said, no lease is properly drawn without this covenant. I have seen many leases without it, and lately scarcely one with it. Such leases as fall within our observation, individually, as lessees, have no such covenant. They have a covenant of another sort. A lease is properly drawn with or without such a covenant, according to the agreement; and the lessor must shew that the restraint is to be put upon the powers, which by law flow out of the interest that he has agreed to give to the other party.

Morgan v. *Slaughter*. 1 Esp. N. P. Ca. 8.

4 Co. 119.

The case of *Folkingham* v. *Croft* was upon an agreement for a lease "with all usual and reasonable covenants, commonly inserted in leases of the same nature." Some construction must be given to those latter words. The explanation with reference to the peculiar property,

3 Anstr. 700.

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which was the subject of that demise, is a most dangerous proceeding; but it is stated as a fact in that case, that there was no regular local practice upon the subject: it being equally common in such leases to insert or omit the covenant. The plaintiff therefore failed upon the ground of local usage; and, though I say that I should not have had much difficulty in deciding that case if it had come before me without any authorities, I fear that would have been, because my opinion is directly contrary to that decision.

As this case also cannot be decided upon any usage locally, I must look to general usage; and if I could see a usage with reference to the peculiar subject of this demise, authorising the insertion of this covenant, I might say the party had contracted for it; but no such fact is made out. Can it be maintained upon a common agreement for a lease, as the meaning of the parties, that the lessee is not to make a sub-demise to part with the possession; in short, that he is to be subject to all these restraints upon the power of alienation, flowing out of the equitable estate, if nothing is said about it; and that under the words "usual covenants," all such restraints are to be inserted? With respect to another species of covenant, it is now held, that, to avoid the consequences of bankruptcy a landlord may take a clause, that the lease shall determine upon the bankruptcy of the tenant; and many prudent men take that clause. Is that also to be inserted as a usual and common covenant? and why not, if the fact, that such a covenant as this occurred in *Dumpor's* case, makes it a proper and usual one.

Covenants that a lease shall determine upon the bankruptcy of the tenant.

4 Co. 119.

Vere v. *Loveden*, *Jones* v. *Jones*, 12 Ves. 179, 186.

I do not go through the reasoning of the *Master of the Rolls* in the two late cases. It will be a satisfaction to me to learn from him, how, rather than rest upon that reasoning which his great mind then suggested, he can bend to that, which appears to me very unsatisfactory, in those previous cases. My opinion, that if decision has not closed this point, the grantor has no right to this covenant, is formed upon grounds, that make me lay out of consideration the small reasoning upon the word "assigns;" and the circumstance, that the lessor might at the end of ten years return to his trade in this shop. The safest rule for property is, that a person shall be taken to grant the interest in an estate which he proposes to convey, or the lease he proposes to make, and that nothing which flows out of that interest, as an incident, is to be done away by loose expressions, to be construed by facts more loose; that it is upon the party who has forborne to insert a covenant for his own benefit, to shew his title to it; and that it is safer to require the lessor to protect himself by express stipulation, than for courts of equity to hold, that contracting parties shall insert, not restraints expressed by the contract or implied by law, but such, more or

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less in number, as individual conveyancers shall from day to day prescribe as proper to be imposed upon the lessee; and that all those restraints, so imposed from time to time, are to be introduced, as the aggregate of the agreement.

In the case of *Boardman* v. *Mostyn*, the parties compelled the Court to inquire as to the usage in the neighbourhood, to be enforced, not as being usual in the proper sense, but as that to which it appeared they looked. So upon many estates the expression is familiar, "such covenants as are usual;" as in the leases granted by the Duke of *Bedford* and Lord *Grosvenor*. The lessee may either desire to be informed what are the covenants usually inserted in their leases, or may not inquire about them; concluding that, being submitted to by the tenants, they are reasonable. In many of those leases it is not thought reasonable that the restraint of alienation should be during the whole term; but it is only for the last seven years of a term, perhaps of sixty or seventy years. Whether that should be applied to a term of twenty-one years, is another consideration. 6 Ves. 467.

Is it then to depend upon the nature of the property? Is an agreement for the lease of a public house, where nothing more is expressed, to be carried into execution in a different manner from an agreement as to property of another species; with regard to which, though there may not be the same reason, the landlord may have reasons operating just as powerfully, for requiring the restraint? The proposition would appear extraordinary, as to an agreement for the lease of a public house, that the tenant was to have a more extensive interest before a license was necessary, than he would now be entitled to in the execution of such a contract; that on account of the alteration of the general law in that respect a different decision is to be made upon the same words.

Upon the whole I came into court with a firm opinion, that the best, that is the most legal decision of this case would be, that the master is right in rejecting this covenant; but the case of *Browne* v. *Raban* having been decided yesterday, an authority of such great weight, I will discuss the subject with the *Master of the Rolls*, before I decide this case. There is a specialty here, that this agreement does specify some covenants, that the lease is to contain, and has no reference to the general expression "usual and proper covenants;" but there is very little difference, whether those words are found in it or not, with reference to the ground of my opinion; which is, that where the interest to be demised carries with it the power of alienation, it can be shut out only by express contract; and the proper and usual covenants must be such as would be inserted in a lease, giving the power of alienation for twenty-one years.

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Aug. 8.

The Lord *Chancellor*.—I have not had an opportunity of consulting the *Master of the Rolls*, who has been out of town; but I understand that the words "with usual covenants" were relied on in the judgment at the *Rolls*. I am extremely anxious not to give my final judgment upon this case, until I know what is the value which the *Master of the Rolls* sets upon that distinction. The principle upon which my opinion rests, is, that before the case of *Henderson* v. *Hay*, there was no sort of difference whether the agreement in the terms of it did or did not refer to usual and proper covenants; that in every agreement, whether as to freehold or leasehold estate, it was implied, that there were to be usual and proper covenants. It will be a great relief to me if it should appear, that the decision of that case did not rest upon that distinction; of which, after repeated consideration, I cannot state the actual value; nor, looking back to the cases, can I state what is the result of them.

3 Bro. C. C. 632.

Aug. 9.

The Lord *Chancellor*.—I have examined the *Register's* book, * as to the case of *Henderson* v. *Hay*, with the view to ascertain whether it is to be considered merely as the opinion, or as the judgment of Lord *Thurlow*. The cause came on upon the objection to the clause, which was proposed, as it is stated in the report; and it was declared, that the defendant has not any right to insist upon the clause to restrain the alienation of the premises being inserted in such lease, reserving the consideration of costs. It is therefore a declaration in judgment upon the very point.

I have had sufficient communication with the *Master of the Rolls* for this purpose. The law of this court is unquestionably, as Lord *Thurlow* there declared it; and I conceived it to have remained undoubted until the case before Lord *Kenyon*, which cannot justly be considered merely as a decision, as his lordship was eminently skilled in the doctrine of this court, and could not have been ignorant of the case of *Henderson* v. *Hay*. I therefore say with reluctance, that the reasoning upon which Lord *Kenyon* determined that case, does not satisfy me that it is the law. When the point was before the Court of *Exchequer*, it does not appear that the court found it easy so to state the law, as they deliberated upon it a considerable time. With respect to that case

Morgan v. *Slaughter*, 1 Esp. N. P. Ca. 8.

Folkingham v. *Croft*, 3 Anstr. 700.

* Reg. Book, 1791. A. Fol. 337. That case was in the argument considered as having ended in a compromise, from the observation of the *Master of the Rolls* in *Brown* v. *Raban*, that a petition of re-hearing was presented by the defendant, and the bill was afterwards by agreement dismissed without costs; which appeared by the *Register's* book.

FOR A LEASE OF A FARM.

not be required to shew his title to grant the said lease (*e*): AND THE SAID [*lessor*] for himself, his heirs, executors, and administrators, doth hereby agree, that the said [*lessee*], his executors, administrators, and assigns, shall and may in the harvest next after the expiration of the said term, have and take a way-going crop of wheat or hard corn off one third part of the land then in tillage, as the same shall fall in due course of husbandry, so as that he thrash the same in the barn of the said premises before the (*thirteenth*) day of (*February*) then next; and leave the straw of such way-going crop, and the manure to be produced in the winter

Tenant to have a way-going crop.

I can only say, that my mind is not by any means satisfied with the reasoning. I have read the two cases before the *Master of the Rolls*, which are in print; and certainly it would be very difficult to answer the reasoning that appears in those judgments. I have stated the grounds of my own opinion upon this point, and I understand the *Master of the Rolls* still considers *that* the better opinion; but, the case in the Court of *Exchequer* having been so decided, he thought it difficult to depart from it. With reference to that however it seems to me, that Lord *Thurlow's* authority in 1791, was not treated with all the respect that is due to it, in the subsequent period; and the existence of these four cases in controversy, three at the *Rolls*, and this one before me, is decisive evidence, that the point was not set at rest by the case in the Court of *Exchequer*. The *Master of the Rolls* also agrees with me, that, whether the agreement contained the clause, that usual covenants should be inserted, or not, would not make a material difference; and, with great anxiety to be right upon this point, I never will consent, that my opinion shall be supposed to stand upon such a distinction. Before the case of *Henderson* v. *Hay*, an agreement for a lease would have been executed precisely in the same mode, as to the covenants to be inserted, whether that clause had been contained in it, or not; so would an agreement for the conveyance of a real estate. In this case therefore I must act upon my clear opinion of what the law is; which is, that the lessor is not entitled to such a covenant.

Vere v. *Loveden*, *Jones* v. *Jones*, 12 Ves. 179, 186.

The exception was accordingly over-ruled (*f*).

(*e*) See note, *post*, 46.

(*f*) [The last case bearing on the subject is *Bennett* v. *Womack*, 7 Barn. and Cres. 627; but it does not vary the law contained in the decisions above detailed, and does not relate directly to the point there discussed.

The condition itself, and what amounts to a breach of it, is considered in Vol. IV. 362.—ED.]

FOR A LEASE OF A FARM.

and spring next before the expiration of the said term, for the use of the said [*lessor*], his heirs or assigns; *and* pay to the said [*lessor*], or his next succeeding tenant, upon demand, (*two*) pounds an acre for such way-going crop, and so in proportion for any greater or lesser quantity than an acre: AND THE SAID [*lessee*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*lessor*], (*f*) his heirs and assigns, that he the said [*lessee*], his executors or administrators, shall and will accept such lease, on the terms and conditions aforesaid; and execute a counterpart thereof when required; and pay the charges for the same when prepared, as well as the charges for these presents (and a duplicate hereof). IN WITNESS, &c. (*g*)

(*f*) If by husband and wife seised in right of the wife, say, "and his wife, her heirs and assigns;"

Execution by steward, &c.

(*g*) If executed by a steward or bailiff, say,

"IN WITNESS whereof, the said [*lessor*], by the said [*steward, &c.*] as his attorney lawfully authorised for this purpose, and the said [*lessee*] himself, have hereto set their hands."

[A. B. the lessor]
by
[C. D. the steward, &c.]
[E. F. the lessee].

Should be sometimes approved by lessor.

Sometimes it may be advisable for the lessor to approve the agreement, thus:

"I hereby declare my approbation of the within (*or* above) written agreement; (*or*, if on a separate paper, the agreement made between my agent A. B. and C. D. bearing date the day of 18 ;) and do hereby agree to grant the lease, upon the terms therein mentioned. WITNESS my hand, the day of 18 ."

FOR A BUILDING LEASE, with a surety for the lessee.

AGREEMENT *for a* BUILDING LEASE *of Freehold or Copyhold* (*a*) *Premises, in which a Surety for the Lessee joins.*

ARTICLES OF AGREEMENT made and entered into this day of in the year of our Lord 18 , BETWEEN [*lessor*] of, &c. of the first part, and [*lessee*] of, &c. of the second part, and [*surety*] of, &c. of the third part. Parties.

(*a*) The statute 32 Hen. VIII. c. 28. relative to leases by tenants in tail, or persons seised in right of their wives, or churches, do not extend to copyhold estates, Gilb. Ten. 179. 185. The late ingenious Mr. Watkins adds, by way of explanation, *i. e.* as I conceive, so as to authorise a lease without license or custom. "But if the custom warrant a lease for twenty-one years, or a license be obtained for that period, I apprehend such lease would be within the statute, and bind the wife and issue. A lease by custom or license is a common law interest: and though the statute cannot authorise the copyholder to create a common law interest to the prejudice of the lord, it may certainly bind that interest when created under a custom or license." 2 Watk. Cop. [194] (*g*). But according to Kitchen on Courts, one of the oldest books on copyholds, if a copyholder of an estate tail, by license of his lord, let for twenty years, rendering the ancient rent, and dies, the issue in tail may enter and defeat the lease. Kitch. 168, 4th. ed. And the prevailing opinion is, that a lease by a tenant in tail of a copyhold, even with license, would not bind the issue in tail, although it would bind the lord who granted the license. [Popham, 188. 2 Watk. Cop. by Coventry, 93, 151.]

Tenant in tail, &c. of copyholds of legal estate.

So where tenant in tail of a legal estate in *copyholds* contracts to sell, &c. if he die without barring the entail, the issue in tail will not be bound. 1 Watk. Cop. 146.

The lord of a manor cannot authorise an equitable tenant of a copyhold to demise, because there is no privity of estate between them, the person having the legal estate being the copyholder; and according to the prevailing opinion, the same mode should be adopted for barring an equitable, as it would be necessary to pursue for the purpose of destroying a legal entail of copyholds: as by recovery, where the special custom requires a recovery to bar a legal entail; or by a surrender, where a surrender will bar an entail of the legal estate. Co. Litt. 60 b. *Radford* v. *Wilson*, 3 Atk. 815. Or by forfeiture and re-grant, where the custom authorises that mode. *Grantham* v. *Copley*, 2 Saund. 422. a. *Pilkington* v. *Stanhope*, 1 Sid. 314. 2 Keb. 127. S. C. *Carr*

Of equitable estates.

FOR A BUILDING LEASE.

Consideration.

Agreement.

FIRST, the said [*lessor*] in consideration of the rents and covenants hereinafter agreed to be paid and performed, doth hereby for himself, his heirs, and assigns, agree with the said [*lessee*], his executors and administrators, that when and so soon as the said [*lessee*], (*b*) his executors or administrators, shall have erected, built, and finished the dwelling-house and premises hereinafter mentioned, that he the said [*lessor*] shall and will (*c*) grant and demise to

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v. *Singer*, 2 Ves. Sen. 604. 1 Watk. Cop. 181. 1 Bac. Abr. 710. 2 Saund. 422. b. Serj. Williams's note (1). Sug. Vend. 177. 5th. ed. Sug. Gilb. Uses, 33 (9). 1 Pres. Con. 155. And a custom to bar by surrender may subsist in the same manner concurrently with a custom to bar by recovery. *Everall* v. *Smalley*, 1 Wils. 26.; 2 Strange, 1197. S. C. *Doe* v. *Turby*, 2 Black. Rep. 944. [*Doe* v. *Dauncey*, 7 Taunt. 674. *Doe* v. *Ossinbrooke*, 2 Bing. 70.]

Therefore it seems clear, that an equitable tenant in tail of a copyhold, cannot bind the issue in tail, or the remainder man, either by a contract for a lease, or by a contract for a sale.

(*b*) The executors and administrators of every person are implied in himself, and are bound by every covenant, and also in a bond, without being named, Dyer, 14, pl. 69; unless it be such an act as is to be performed *personally* by the covenantor, and there has been no breach before his death. Co. Litt. 209. a. Cro. Eliz. 553. 2 P. Wms. 197; but heirs must be expressly named, in a writing under hand and seal, otherwise they are not chargeable. *Gifford* v. *Manley*, Cas. Temp. Talbot, 108. 3 Bac. Abr. 458, *Heir*, &c. (F). Noy's Maxims, 200, 233, 241, 9th ed. [except on covenants which run with the land. *Lougher* v. *Williams*, 2 Lev. 92.]

COPYHOLD.

(*c*) If the premises are of copyhold tenure, say,

To procure license to demise.

"at his own expense, procure from the lord or lords, lady or ladies of the manor or manors, of which the premises hereinafter mentioned are held, a license or licenses, if the same should be necessary, enabling him to demise*, and, that he the said [*lessor*] shall and will thereupon"

Properties of a lease of a copyhold with license.

(*) The term created by license is a common law, and not a copyhold interest. Co. Cop. s. 51. Tr. 119—120. The lessee may make an assignment or underlease for years without any further license or consent of the lord. Gilb. Ten. 299. For the lord's interest is discharged for so many years; and if the copyholder die without heirs, yet the lease will stand against the lord, by reason of his license, which amounts to a

FOR A BUILDING LEASE.

the said [*lessee*] his executors and administrators, by a good and valid lease in the law, ALL THAT piece or parcel of land, &c. situate, &c. with the appurtenances, which said premises are more particularly delineated and described in the plan or ground plot, drawn in the margin hereof, TO HOLD to the said [*lessee*], his executors, administrators, and assigns, from the day of next ensuing, for the full term of years; AT AND UNDER the yearly rent of pounds, payable quarterly, on Christmas-day, Lady-day, Midsummer-day, and Michaelmas-day, free and clear of and from the sewers rate, land-tax, and all and every other rate, tax, charge, assessment, or imposition whatsoever, either parliamentary or parochial, to which the landlord, tenant, or premises is or are, or hereafter shall or may be liable; WHICH said indenture of lease and a counterpart thereof are to be prepared by the solicitor of the said [*lessor*], at the costs and charges of the said [*lessee*], his executors and administrators, and are to contain the several covenants, clauses, provisoes, agreements, and restrictions, usually reserved and contained in leases of

Parcels.

Term.

Rent.

Lease and counterpart to be at lessee's expence.

Usual covenants to be contained in lease

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confirmation. *Turner* v. *Hodges*, Hutt. 102. So if the copyholder should forfeit his estate, the lease perhaps would stand good against the lord, the demise being by license. Hob. 177. pl. 203. 6 Vin. Abr. 218. pl. 5. 1 Cru. Dig. 326. s. 21. 359. s. 12. It is extendible at law; Watk. notes 148, 149. Gilb. Ten. 467. Gilb. Ten. 327, *contra*; and may even continue after the determination of the copyhold. 2 Watk. Cop. 37, 121. Watk. n. Gilb. Ten. 153. p. 469. The copyholder is tenant to the lord; on his death his heir must be admitted and pay his fine. But the lord cannot notice the change of the lessee: he has a tenant independently of him. 1 Watk. Cop. 301. Although copyholds are excepted in the Register acts, yet as leases of copyholds by license are common law interests, it is usual to register them and all assignments, if the estate created be of such a nature or extent, that if derived from a freehold they would require registry. Sug. Vend. 604, 5th ed.

Mr. Watkins thinks the license should be on condition that the real annual value be reserved, in case of *forfeiture* or *escheat*. 2 Watk. Cop. 121, (*a*). But in a building lease that could not be done easily, nor is it known to have been adopted in any instance. It might sometimes be proper to provide in the license, that the copyholder shall not take any fine or premium on granting the lease.

FOR A BUILDING LEASE.

houses (in London and Westminster) (*d*); and also the following covenants on the part of the lessee, that is to say; for keeping the said dwelling-house and premises insured against fire in the sum of pounds, in some or one of the public offices of insurance in London or Westminster; *and also* for painting twice in oil colours, all the outside wood and iron work of the said premises once in every third year of the said term; *and also* for painting and papering the interior of the said premises once in every seventh year of the said term; *and also* not to use upon the said premises any forge or anvil (save and except small forges to temper tools and other matters); *nor* to exercise or carry on any sort of manufactory thereon; *and* not to carry on any noisome, dangerous, or offensive trade or business therein or thereupon; *and also* the usual covenant for repairing and keeping in repair the said premises and every part thereof; *and* for yielding and delivering up the same at the end of or other sooner determination of the said term, in good and proper repair, with all and every the fixtures, erections, and improvements which shall or may be made, fixed, or fastened, or set up in, upon, or about the said premises, which shall or may come under the denomination of landlord's fixtures; *and* for liberty for the lessor to enter and view the said premises twice or oftener in every year, and to give notice of repair, and for the lessee to repair accordingly within three months after every such notice; *and* the usual proviso for *re-entry* on non-payment of rent, or on breach or nonperformance of covenants; AND THE SAID [*lessee*] for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors or administrators, shall and will accept such lease, on the terms and conditions aforesaid, and execute a counterpart thereof, when required, and pay the charges of the same when prepared, as well as the charges for these presents (and a duplicate hereof); AND THE SAID [*lessee*] and [*surety*] as his

And to insure.

For painting outside.

Painting and papering inside.

Not to use any forge or anvil,

or carry on a manufactory, or any offensive trade.

For repairing.

For delivering up premises at the end of term,

with all fixtures, &c.

Liberty for lessor to enter to view repairs.

Power of re-entry.

Covenant by lessee to accept lease.

To execute counterpart, and pay the charges.

COPYHOLD not to contain any clause to cause a forfeiture.

(*d*) If the premises be copyhold, ... "but shall not contain any covenant or clause which may by any means cause a forfeiture of the said premises;"

FOR A BUILDING LEASE.

surety, do, and each of them doth hereby severally and respectively, and for their several and respective heirs, executors, and administrators, undertake, promise, and agree to and with the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors or administrators, or on his default, the said [*surety*], his executors or administrators, shall and will, on or before the day of next, at his and their, or one of their own costs and charges, in a good, sound, substantial, and workmanlike manner, and with fit and proper materials of all kinds, to be approved by the architect (*or* surveyor) of the said lessor, and under the direction and inspection of his said architect (*or* surveyor) (*e*), erect, build, and complete (or cause (*f*) to be erected, built, and completed), and in a workman-like manner finish, one or more good and substantial brick messuage or tenement, messuages or tenements, fit for habitation, and in all things conformable and agreeable to the specification thereof hereunder written; *and* shall and will lay out and expend thereon the sum of hundred pounds and upwards; *and also* shall and will bear, pay, and discharge the said architect's (*or* surveyor's) fees of *five* pounds *per centum* on the expenditure, for superintending and directing the same (*g*); AND for the

Covenant by lessee and his surety to build a dwelling-house, &c.

To expend a certain sum.

To pay architect's fees.

Penalty.

(*e*) "Pull down the said messuage, tenement, and premises, and on the site thereof, erect," &c.

To pull down and re-build.

(*f*) This is useless: he who causes payment, pays. Serj. Williams's note, 1 Saund. 234 b. (6). So he who causes to be built, builds.

(*g*) "AND *it is hereby further agreed* by and between the said parties to these presents (that the said [*lessor*] shall, at his own expense, within days from the date hereof, deliver to the solicitor of the said [*lessee*] an abstract of the title of the said [*lessor*] to the fee (*or* enabling him to grant the said lease) of the premises hereby agreed to be demised, and at his own expense produce the deeds and other evidences therein mentioned, at the office of the solicitor of the said [*lessee*], to be examined therewith; *and also* in addition to the usual covenants by lessors, there shall be contained in the said indenture of lease, a covenant to produce and shew forth the same deeds and evidences, at the request and at the costs and

Lessor to deliver abstract of his title.

And covenant to produce deeds, and let lessee have copies.

FOR A BUILDING LEASE.

true performance of the said agreement, each of the said

charges of the said [*lessee*], his executors, administrators, or assigns, and to permit him and them to take or have true and attested copies thereof at his or their own costs and charges;")

Lessor not to deliver abstract of title.

or, "that the said [*lessor*] shall not be called upon to shew his title to grant the said lease of the premises hereby agreed to be demised;"

Lessee should require production of lessor's title.

A lessee is a purchaser *pro tanto*, and whenever he intends laying out money on the premises, should always require the production of the title of the person who assumes to grant a lease, whether he be owner of the inheritance, tenant for life, or in tail under a power of leasing; or, where the lessor himself has only a term for years or life, the title to the freehold as well as the leasehold interest should be investigated. All the leases of the Pulteney estate were set aside, on account of a power of leasing not having been duly pursued: so the Duchess of Bolton, who was tenant for life, but pretended to have a power of leasing for three lives, granted leases of lands in Devonshire, and received fines to the amount of 29,000*l.* but as she had no such power, the leases were set aside. Unless the lessee examines the title deeds, with the abstract, he cannot be assured that the lessor has not previously mortgaged the property; in which case the lessee and those claiming under him would be liable to be evicted by the mortgagee, unless they redeemed the mortgage; because all leases or other interests in the land, made or conveyed by the mortgagor subsequent to the mortgage, though before forfeiture, are void as against the mortgagee; and if he permitted the lessee to remain, he would be a mere tenant at will, and liable to be turned out of possession; in which case his only remedy would be an action against his lessor under the covenants in the lease. *Keech* v. *Hall*, Dougl. 21. 1 Pow. Mortg. 226. But if the mortgagee fraudulently, or by that gross negligence, which amounts to evidence of a fraudulent intention, permit the mortgagor to retain the title deeds, it seems the mortgagee would be restrained in equity from evicting the lessee. *Head* v. *Egerton*, 3 P. Wms. 281. *Ryall* v. *Rowles*, 1 Ves. Sen. 360. 1 Atk. 168. *Goodtitle* v. *Morgan*, 1 Term Rep. 762. *Peter* v. *Russell*, 2 Vern. 726. 1 Eq. Ca. Abr. 321. Gilb. Eq. Rep. 122. *Towle* v. *Rand*, 2 Bro. C. C. 650, and Eden's note. *Plumb* v. *Fluit*, 2 Anstr. 432. *Evans* v. *Bicknell*, 6 Ves. 190. *Barnett* v. *Weston*, 12 Ves. 133. and see 1 Pow. Mortg. 62, 4th ed. 1 Fonbl. Treat. Equity, 165, 5th ed. 1 Madd. Ch. 324. 2d ed. Sug. Vend. 281, 5th ed.

In *Keech* v. *Hall*, 1 Dougl. 23, Lord Mansfield treats it as clear that a lessee has a right to examine the title deeds of his lessor. He says

parties bindeth himself to the other in the penalty (*h*) of

FOR A BUILDING LEASE.

whoever wants to be secure when he takes a lease, should enquire after and examine the title deeds. In practice, indeed, especially in the case of great estates, that is not often done, because the tenant relies on the honour of his landlord; but whenever one of two innocent persons must be a loser, the rule is *qui prior est tempore, potior est jure.* If one must suffer it is he who has not used due diligence in looking into the title. And see *Waring* v. *Mackreth,* Forr. Exch. Rep. 129. *White* v. *Foljambe,* 11 Ves. 343. *Deverell* v. *Lord Bolton,* 18 Ves. 505. *Sed vide Gwillim* v. *Stone,* 3 Taunt. 433.

On a bill by the intended lessor, for the specific performance of an agreement to take a lease for twenty-one years, at rack rent, *Sir W. Grant* decided, that the plaintiff could not enforce a specific performance, without producing the title to the inheritance. *Fildes* v. *Hooker,* 2 Merivale, 425. [*Purvis* v. *Rayer,* 9 Pri. 488. Sug. Vend. 301—9. 7th ed.]

A purchaser, or an intended lessee of a bishop's lease, cannot call for the lessor's title. *Fane* v. *Spencer,* 2 Merivale, 430. n. It remains however undecided, whether a purchaser of a common leasehold interest, or an intended lessee, can, as *plaintiff,* compel the production of the title to the inheritance (*a*).

In every contract for a lease, or for the purchase of a leasehold interest, there should be an express stipulation respecting the production of the title, either affirmatively or negatively.

Lessors cannot sometimes be advised to shew their title. The *Newcastle* corporation case is a good lesson upon this subject of production. They produced their charters to satisfy curiosity: some persons got hold of them, and the consequence was, the corporation lost 7,000*l.* a year. 8 Ves. 148.

(*h*) In all cases where penalties are inserted in a case of non performance, this does not release the parties from their agreement, but they must perform it notwithstanding, and have not an option to pay the penalty and be released from the performance of the agreement. *Christ's Hospital* v. *Pugh,* Dom. Proc. 20 March, 1727. *Howard* v. *Hopkins,* 2 Atk. 371. *Chilliner* v. *Chilliner,* 2 Ves. 528. *Parks* v. *Wilson,* 10 Mod. 518. See *Hobson* v. *Trevor,* 2 P. Wms. 193, 2 Scho. and Lef. 684, and *Margrave* v. *Archbold,* 1 Dowe, 107. Sed vide *Woodward* v. *Eyles,* 2 Vern. 119, a case of liquidated damages, as to which, see 1 Swanst. 318, n. (*a*) 1 Madd. Ch. 44, 2d ed. Sug. Vend. 194. 5th ed. Fonbl. Treat. Equity, 153, 5th ed. [*Reilly* v. *Jones,* 1 Bing. 302.]

Nomine pœnæ.

(*a*) [It has been very lately decided, at *Nisi Prius,* that upon the sale of a lease without any stipulation for making a good title, or for the production of the lessor's title, the purchaser cannot insist upon it.

FOR A BUILDING LEASE.

hundred pounds of lawful money of Great Britain and Ireland, to be recovered against the defaulters as liquidated damages, in any of his Majesty's courts of record at Westminster. IN WITNESS, &c.

Specification. THE SPECIFICATION above referred to.

FOR A BUILDING LEASE of part of premises held under an agreement for building leases.

AGREEMENT *for a* BUILDING LEASE *of Part of Premises, held under an Agreement for Building Leases, with Agreement by the Ground Landlord, to grant a separate Lease of the Premises, discharged from any Liability or Connection with the other Premises.*

ARTICLES OF AGREEMENT made and entered into this day of in the year 18 ;

Parties. BETWEEN [*the vendor*] of, &c. of the first part, [*the purchaser*] of, &c. of the second part, and [*the ground landlord*] of, &c. of the third part.

Recital of original agreement. WHEREAS by memorandum of agreement, bearing date on or about the day of last past, and made between the said [*landlord*] of the one part, and the said [*vendor*] of the other part, the said [*landlord*] agreed to let unto the said [*vendor*] ALL THAT piece or parcel of ground, &c. TO HOLD unto the said [*vendor*], his executors, administrators, and assigns, for the term of years, from the day of then next, AT the clear yearly rent of pounds, payable quarterly, clear of the land tax, sewers rate, and all other rates and taxes whatsoever: and the said [*vendor*] agreed to expend the sum of pounds, in erecting dwelling houses on the said piece or parcel of ground, within years from the date thereof, according to the plan and specification therein mentioned: AND THE SAID [*landlord*] agreed, that as soon as the said [*vendor*] should have erected one of the said dwelling-houses, he the said [*landlord*] would grant to the said [*vendor*], his executors, administrators, and assigns, either a lease of the whole of the said premises, at the said yearly rent of pounds, or several

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This was decided on an action for the deposit, brought on account of the title not being produced. *George* v. *Pitchard*, 1 Ry. & M. 417.—*Ed.*]

separate leases of the said dwelling-houses and premises as they should be from time to time finished, or join with the said [*vendor*] in agreements for building leases of the remaining part of the said premises at apportioned rents, according to their respective value, to be ascertained by the surveyor of the said [*lessor*], to such person or persons as the said [*vendor*], his executors or administrators, should require and appoint; such separate leases, and agreements for leases to be granted, discharged from all connection and liability on account of the rents, covenants, and conditions relating to the other part of the said premises not demised, or agreed to be demised, by such lease or agreement for lease respectively: AND WHEREAS the said [*vendor*] hath erected one of the said dwelling-houses and premises to the satisfaction of the said [*landlord*]; AND THE SAID [*purchaser*] hath agreed with the said [*vendor*] to purchase all his interest in the piece of the said ground hereinafter described, for the price of pounds, subject to the apportioned yearly rent of pounds, which hath been ascertained by the surveyor of the said [*lessor*], to be the proportionate part of the said yearly rent of pounds which ought to be paid in respect of the said piece of ground; and thereupon the said [*lessor*] hath been applied to by the said [*vendor*], and he hath consented to enter into the agreement hereinafter contained: NOW THESE PRESENTS WITNESS, that in consideration of the said sum of pounds of lawful money of Great Britain [and Ireland (*a*)], to the said [*vendor*] well and truly paid by the said [*purchaser*], at or immediately before executing these presents, (the receipt whereof is hereby acknowledged, and thereof and therefrom the said [*vendor*] doth hereby acquit, release, and discharge the said [*purchaser*], his executors, administrators, and assigns, by these presents;) he, the said [*landlord*], by and with the consent, and at the request of the said [*vendor*], testified by his executing these presents, doth hereby for himself, his heirs and assigns, covenant and agree with the said [*purchaser*], his executors and administrators, that when and so soon as the said [*purchaser*], his executors or administrators, shall have completed and finished the several works and matters hereinafter particularly men-

FOR A BUILDING LEASE of part of premises, held under an agreement for building leases.

Recital of contract.

Consideration.

Agreement by ground landlord to grant building lease.

(*a*) [This seems the most correct expression since the stat. 6 Geo. IV. c. 79. *Ed.*]

FOR A BUILDING LEASE of part of premises held under an agreement for building leases.

tioned, that he, the said [*landlord*], his heirs or assigns, shall and will grant and demise to the said [*purchaser*], his executors or administrators, by a good and valid lease in the law, ALL THAT piece or parcel of ground, situate, &c. particularly mentioned and described in the margin hereof, with the erections and buildings then erected thereon, with their appurtenances, TO HOLD to the said [*purchaser*], his executors, administrators, and assigns, from the

Term.

day of last past, for the full term of years,

Rent.

AT and under the yearly rent of pounds, payable quarterly, on Michaelmas-day, Christmas-day, Lady-day, and Midsummer-day, clear of the land-tax, sewers rate, and all other rates, taxes, charges, and assessments whatsoever: the first payment of the said rent by the said [*purchaser*], his executors and administrators, to begin and be made on the day of now next.

Lease and counterpart to be prepared by solicitor to landlord, at lessee's expense:

WHICH said indenture of lease, and a counterpart thereof, are to be prepared by the solicitor of the said [*landlord*], at the costs and charges of the said [*purchaser*], his executors and administrators; *and* are to contain the several covenants, clauses, provisoes, agreements, and restrictions, usually reserved and contained in leases of houses (in London and Westminster (*or*, in the neighbourhood); *and*

and to contain usual covenants;

and a covenant to paint outside wood and iron work every third year.

also a covenant on the part of the said [*purchaser*,] for painting twice in oil colours all the outside wood and iron-work of the said premises, once in every third year of the said term; [(*a*) *and* for painting the interior of the said dwelling-house and premises, and papering the rooms on the ground and first floor once in every seventh year of the said term;] *and*

To paint the interior, and paper the ground and first floor every seventh year.

To repair.

also the usual covenant for repairing and keeping in repair the said premises, and every part thereof; *and* for yielding and delivering up the same at the end, or other sooner determination of the said term, in good and proper repair, with all and every the fixtures, erections, and improvements, which shall or may be fixed, or fastened, or set up, in, upon, or about the said premises, which shall or may come under the denomination of landlord's fixtures; *and*

To deliver up at the end of term, with the landlord's fixtures.

Liberty for lessor to enter to view, &c.

for liberty for the lessor to enter and view the said premises twice or oftener in every year, and to give notice of repair, and for the lessee to repair accordingly within three months after every such notice; *and also*

To insure.

a covenant on the part of the lessee to insure the said

(*a*) This is not a usual covenant.

FOR A BUILDING LEASE of part of premises held under an agreement for building leases.

premises against fire in some insurance office in London or Westminster in the name of the lessor and lessee, in the sum of hundred pounds or more; *and also* the usual proviso for re-entry on nonpayment of rent (*or* (*a*) on breach or nonperformance of the covenants). AND THE SAID [*purchaser*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*landlord*], his heirs and assigns, to accept such lease on the terms and conditions aforesaid, and to execute a counterpart thereof when required, and to pay the charges for the same when prepared, and also the charges for these presents; AND THE SAID [*purchaser*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*vendor*], his executors and administrators, that he the said [*purchaser*], his executors or administrators, shall and will, on or before the day of next, at his and their own costs and charges, in a good, sound, substantial, and workman-like manner, and with fit and proper materials of all kinds, to be approved by the architect of the said [*landlord*], and under the direction and inspection of the said architect, lay out and expend the sum of hundred pounds in erecting, building, completing and finishing, and rendering fit for habitation, upon the said piece of ground, one brick dwelling-house covered with slates or tiles, with such party walls, conveniences, and necessaries to the same, as shall be requisite and fitting, and in all things conformable and agreeable to the specification thereof hereunder written; *and also* bear, pay, and discharge the said architect's fees of five pounds per centum on the expenditure, for superintending and directing the same; AND for the true performance of the said covenants and agreements, each of the said parties bindeth himself and every of them bind themselves, his and their heirs, executors, and administrators, to the other and others of them, in the penalty of hundred pounds of lawful money of Great Britain [and Ireland], to be recovered against the defaulters as liquidated damages in any of his Majesty's courts of record at Westminster (*b*). IN WITNESS, &c.

Power of re-entry.

Covenant by lessee with landlord, to accept lease.

Covenant by lessee with vendor to erect a dwelling-house, &c.

and pay architect's fees.

Penalty.

THE SPECIFICATION to which the above written agreement refers.

Specification.

(*a*) Vide post, 58. (*b*) Vide ante, 47, (*h*).

FOR A BUILDING LEASE.

AGREEMENT *for a Building Lease, or several Building Leases, specially drawn, with proper Provisions for an extensive undertaking.*

ARTICLES OF AGREEMENT indented, made, and entered into the day of 18 ,

Parties. BETWEEN [*lessor*], of, &c. of the one part, and [*lessee*], of, &c. of the second part.

Recital of agreement for lease. WHEREAS the said [*lessor*] hath agreed to let, and the said [*lessee*] hath agreed to take the piece or parcel of ground hereinafter particularly mentioned and described, upon the terms and conditions hereinafter expressed: NOW THEREFORE THESE PRESENTS WITNESS, and the said [*lessor*] doth

Covenant by lessor to grant leases when works finished. hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said [*lessee*], his executors, administrators, and assigns, in manner and form following; that is to say, *That* he the said [*lessor*], his heirs and assigns, shall and will, upon the request, and at the costs and charges of the said [*lessee*], his executors, administrators, or assigns, when and so soon as the messuages or dwelling-houses, erections, and buildings hereinafter covenanted to be erected and built, shall be erected, built, and covered in to the approbation and satisfaction of the architect or surveyor for the time being of the said [*lessor*], his heirs or assigns, as hereinafter mentioned, by a good and sufficient indenture of lease, or by good and sufficient indentures of lease, demise and grant unto the said [*lessee*], his executors,

Parcels. administrators, and assigns, ALL THAT piece or parcel of land, situate and being at, &c. and containing, &c. and bounded, &c. TO HOLD the said piece or parcel of land, and the messuages or dwelling-houses, erections, and buildings intended to be thereupon erected and built, with the appurtenances, unto the said [*lessee*], his executors, administrators, and assigns, from the *twenty-fifth*

Term. day of *March* now next, for and during and unto the full

end and term of (*ninety-nine*) years thence next ensuing, and fully to be complete and ended: AT the yearly rent of a pepper-corn for the first two years of the said term; AND AT AND UNDER the clear yearly rent or sum of pounds for the remainder of the said term, payable quarterly, that is to say, on the *twenty-fourth* day of *June*, the *twenty-ninth* day of *September*, the *twenth-fifth* day of *December*, and the *twenty-fifth* day of *March*, in each and every year of the said remainder of the said term, free and clear of the land tax, sewers rate, and all other rates, taxes, assessments, and impositions, of what nature or kind soever, parliamentary, parochial, or otherwise; the first quarterly payment of the said rent of pounds be made on the *twenty-fourth* day of *June*, which will be in the year of our Lord 18 : AND in consideration thereof, the said [*lessee*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said [*lessor*], his heirs and assigns, in manner following, that is to say, *That* he the said [*lessee*], his executors, administrators, or assigns, shall and will, on or before the day of 18 , at his or their own proper costs and charges, under the inspection, with the approbation, and to the satisfaction of the architect or surveyor for the time being of the said [*lessor*], his heirs and assigns, erect, build, and cover in, upon the said pieces or parcels of land hereby agreed to be demised, with stock bricks, and other good and proper materials of all sorts, in a good, substantial, and workmanlike manner, according to a plan and elevation thereof mentioned or contained in the schedule hereunder written (*a*), *twenty* messuages or dwelling-houses, of the first rate of building, to be covered with slate, and to have leaden gutters at least seven pounds to the foot superficial (*b*); the front and back walls of each messuage or

FOR A BUILDING LEASE.

At the rent of a pepper-corn for the first two years; and pounds, for the remainder of the term, payable quarterly.

Covenant by intended lessee to build.

Under inspection of architect, &c.

Dwelling-houses, &c. of the first rate.

Leaden gutters.

(*a*) "and conformable, or as near as may be, to the houses already built by [C. D.] in the said new intended street, a range of messuages, &c." (*as above.*)

Conformable to other houses.

(*b*) "or with sheet copper, at least sixteen ounces to the foot superficial,"

Sheet copper gutters.

FOR A BUILDING LEASE.

dwelling-house to be at least two bricks and a half thick in the cellar story; two bricks thick at least from the ground to the two pair of stairs floor; and from thence upwards, one brick and a half thick at least (except the parapets), and the parapets to be coped with Portland stone, and all the cross partitions to be carried on brick walls the height of the cellar story: AND ALSO that he, the said [*lessee*], his executors, administrators, or assigns, shall and will, in erecting and building the said messuages or dwelling-houses, make and leave an area six feet wide, and fix a stone curb eight inches by six inches, with iron railing five feet high thereon at the level, to be respectively ascertained and approved of by the said architect or surveyor of the said [*lessor*], his heirs and assigns: *and* shall and will pave the footway in the front thereof with Yorkshire Ealand-edge paving; *and* lay a curb thereto of Cornish-moor stone, the whole to be seven feet and six inches wide; *and also* that he the said [*lessee*], his executors, administrators, or assigns, shall and will [at his and their own proper costs and charges] bear and pay a just and fair proportion (*c*) with the other tenants, lessees, and occupiers of any other lands, tenements, or hereditaments of the said [*lessor*], his heirs or assigns, or of any other person or persons whomsoever, near or adjoining to the premises hereby agreed to be demised, of all costs, charges,

To make an area with stone curb, and iron railing.

To pave the footway.

To pay a proportion of the expense of other pavements, ways, channels, &c.

(*c*) "of all expences to be incurred in building and making a common sewer under ground, in front of the said messuages or dwelling-houses, such proportion to be ascertained by the said architect or surveyor of the said [*lessor*], his heirs or assigns, but that he the said [*lessee*], his executors, administrators, or assigns, shall not nor will, at any time or times hereafter, convert or turn the soil of or from any privy or bog-house of or belonging to the aforesaid messuages or dwelling-houses, or of or belonging to any other messuages or dwelling-houses whatsoever, into the said common sewer so to be built and made as aforesaid; *and also* that he the said [*lessee*], his executors, administrators, or assigns, shall and will bear and pay a just and fair proportion"

To pay expenses of making common sewer.

FOR A BUILDING LEASE.

and expenses incurred, or to be incurred, in the cutting, dividing, building, or making of all or any other pavements, ways, channels, public sewers, wydraughts, drains, and gutters, in, upon, through, under, or about the said premises hereby agreed to be demised, or any part or parts thereof; such proportion to be ascertained by the said architect or surveyor of the said [*lessor*], his heirs, or assigns: AND IT IS HEREBY COVENANTED AND AGREED by and between the said parties, that it shall and may be lawful to and for the said [*lessee*], his executors, administrators, or assigns, at any time or times hereafter during the said term, to make and build arched vaults in the front of all or any of the said messuages or dwelling-houses, under the surface of the said intended street: *Provided* that such vaults be made of good sound bricks; and such area, stone curb, iron railing, foot pavement and curb thereto, as hereinbefore mentioned to be made, shall be left and made, and in no wise injured thereby, but not otherwise; *and also* that it shall and may be lawful to and for the said [*lessee*], his executors, administrators, or assigns, at any time or times hereafter during the said term, to erect and build a mews, or stables and coach-houses, at a proper and convenient distance behind the said messuages or dwelling-houses covenanted to be erected and built as aforesaid; *and also* to erect and build other coach-houses and stables, to be attached to the gardens of or belonging to the said messuages or dwelling-houses: *Provided* that all and every such coach-houses and stables be erected and built of good and proper materials, in a substantial and workmanlike manner, and be covered with slates, and be situated and finished to the approbation and satisfaction of the said architect or surveyor of the said [*lessor*], his heirs or assigns, but not otherwise (*d*); *and* that when and so soon as the said

Agreement that lessee may make vaults under the street,

or build stables, and coach-houses.

or build other coach-houses and stables.

Lessee to be entitled to have separate leases, when works finished.

(*d*) "*and also* to carry any drains from the said messuages or dwelling-houses for conveying water or soil from a water-closet into the common sewer, belonging to the said [*lessor*], without paying any thing for the use thereof; but not to carry soil from any privy or bog-house into or towards the said common sewer;"

or carry drains to the common sewer.

FOR A BUILDING LEASE.

architect or surveyor shall have made his report to the said [*lessor*], his heirs or assigns, that the said messuages or dwelling-houses are erected, built, and covered in to his approbation and satisfaction, according to the true intent and meaning of these presents, the said [*lessee*], his executors, administrators, or assigns, shall be entitled to have separate leases of each messuage or dwelling-house, with the ground and appurtenances thereunto belonging, for the term of [*ninety-nine*] years, or so much thereof as shall be then to come and unexpired, and at such rents as shall be respectively ascertained by the said architect or surveyor of the said [*lessor*], his heirs or assigns, in a just and fair proportion to the said gross rent of pounds, on executing counterparts thereof respectively, and paying for each of such leases and a counterpart thereof a sum not exceeding (*guineas*): AND IT IS HEREBY FURTHER COVENANTED AND AGREED by and between the said parties, that in all and every the leases to be granted by the said [*lessor*], his heirs or assigns, in pursuance of these presents, there shall be contained a covenant on the part of the said [*lessee*], his executors, administrators, and assigns, to complete the messuages or dwelling-houses, with the appurtenances so to be demised as aforesaid, fit for use and habitation, in a good, substantial, and workman-like manner, with all necessary and proper fixtures and fastenings to the same; *and also* to pay the rent to be thereby reserved, and the land tax, sewers rate, and all other taxes, rates, and assessments, of what nature or kind soever, parliamentary, parochial, or otherwise, payable for or in respect of the premises thereby to be demised, or any part thereof; *also* to repair, amend, support, and keep the same premises, at all times during the said term, as well with as without notice from the said [*lessor*], his heirs or assigns, in good and substantial repair; *also* to paint the external wood work and iron work of the same premises twice in oil colour every fourth year; *also* to insure the premises for the full value of so much thereof as can be damaged by fire in some public office of insurance from fire, in London or Westminster; and to keep the same so insured during the said term, and to produce and shew to the said [*lessor*], his heirs or assigns, or his

Leases to contain covenants to complete houses properly.

To pay rent and taxes.

To repair.

To paint.

To insure.

or their steward, agent, or receiver of rents for the time being, yearly and every year, the receipt given by or on the behalf of such office, acknowledging the payment of the premiums on the policy, whereby the same premises shall be insured for the ensuing year; *also* to pay a fair and just proportion of all expenses and charges for renewing or repairing pavements; renewing, cleansing, or repairing walls, gutters, pipes, drains, and water-courses, which shall be used in common by the said occupiers of the demised premises, and the occupiers of any other messuages, dwelling-houses, or other erections already erected, or hereafter to be erected in the said street, or in any other part of the now estate of the said [*lessor*], or any other person or persons near or adjoining thereto; *and* to leave the premises at the end of the term agreed to be demised, in good and substantial repair, together with all the marble and other chimney pieces, mantle pieces, hearths, hearth stones, covings, jambs, foot pieces and slabs, sash and other windows, casements, window shutters, doors, locks, keys, bolts, bars, and fastenings whatsoever; marble and other water closets, cisterns, and things thereunto belonging; and all wainscot partitions, fixed presses, shelves, dressers, drawers, pipes, pumps, posts, pales and rails, and other fixtures, fixed or fastened to the premises, or which shall be found thereon, or on any part thereof, during the said last seven years of the said term; *and* to permit the said [*lessor*], his heirs and assigns, and his and their respective agents, surveyors, and workmen, to enter upon the premises to be thereby demised at any time or times during the term, for the purpose of surveying the same premises, and the state and condition thereof, and examining if any and what repairs are or may be wanting, and to leave notice in writing or otherwise to or for the [*lessee*], his executors, administrators, or assigns, to repair, within three calendar months, to the approbation and satisfaction of the architect or surveyor for the time being of the said [*lessor*], his heirs or assigns, every defect which shall be found upon such survey or examination; *also* to permit the said [*lessor*], his heirs or assigns, or his or their respective agents, surveyors, and workmen, to enter into and upon the said premises, or any part thereof, at

To pay proportion of expenses for renewing and repairing pavements, &c. with adjoining occupiers.

To leave premises in repair, with the fixtures, &c.

To permit lessor to enter and view the state of the premises.

And to repair according to notice.

To permit lessors during last seven years to enter to make a schedule of fixtures.

FOR A BUILDING LEASE.

any time or times during the last *seven* years of the said term, for the purpose of taking a schedule or schedules of the fixtures therein or thereupon, or in or upon any part thereof; *also* to restrain and prevent the said [*lessee*], his executors, administrators, and assigns, from cutting, maiming, or injuring any of the principal timbers or walls of the building or buildings, or from letting or converting any part of the premises into any shop for trade, or suffering any open or public shew of business therein, without the license of the said [*lessor*], his heirs or assigns, in writing, for that purpose first obtained: *and* from committing or suffering any annoyance to the other tenants, lessees, or occupiers of any other messuages, dwelling-houses, lands, or other hereditaments of or belonging to the said [*lessor*], his heirs or assigns, near or adjoining the premises agreed to be demised; *and also* a clause for re-entry, on non-payment of the rent twenty-one days after the aforesaid days of payment, if the same should be demanded upon or at any time after such twenty-one days, and not paid when demanded (*e*): AND also a covenant on the part of the said [*lessor*], his heirs and assigns, for the quiet possession of the premises so to be demised, against any person or persons claiming under him or them, or his or their ancestors, he the said [*lessee*], his executors, administrators, or assigns, paying the rent and performing the covenants and agreements thereby on his and their part agreed to be paid and performed; *and also* all other covenants, clauses, and agreements, usual, necessary, or proper to be inserted and contained in leases of the like kind: AND LASTLY, the said [*lessee*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, or assigns, shall and will accept and take a lease or leases of the said pieces or parcels of land,

To restrain lessee from injuring principal timbers, &c. or carrying on any business there.

And from committing annoyance to other tenants.

Power of re-entry on non-payment of rent;

by lessor for quiet enjoyment;

and all other usual covenants.

Covenant to accept leases and execute counterparts, and pay law charges.

(*e*) Sometimes there is a clause of re-entry on breach or non-performance of any or either of the covenants or agreements, contained in the lease, *ut ante* 51; but that clause is now frequently omitted in common leases, because it may subject the lessee to the forfeiture of his lease, by neglecting to do perhaps some very trivial thing; and in building leases it is generally omitted. [And see Vol. IV. 358.]

with the messuages or dwelling-houses, erections, and buildings to be thereupon erected and built as aforesaid, under the terms and conditions hereinbefore expressed, and execute counterparts thereof respectively, and pay such sums of money as aforesaid for each and every such leases and counterparts; *and also* the expenses of preparing and executing these presents and the counterpart thereof. IN WITNESS, &c. FOR A BUILDING LEASE.

AGREEMENT *for a* FINISHING LEASE *of a Dwelling-House nearly completed by the Lessor, or for an* UNDERLEASE. FINISHING, OR UNDERLEASE.

ARTICLES OF AGREEMENT made and entered into the day of 18 , BETWEEN [*lessor*], of, &c. of the one part, and [*lessee*], of &c. of the other part. Parties.

FIRST, the said [*lessor*], in consideration of the rents, covenants, and agreements hereinafter mentioned, doth hereby for himself, his heirs, executors, aud administrators, covenant and agree with the said [*lessee*], his executors and administrators, that when and so soon as the said [*lessee*], his executors or administrators, shall have completed and finished the several works and matters hereinafter particularly mentioned; that he the said [*lessor*], his (*a*) heirs or assigns, shall and will grant and demise to the said [*lessee*], by a good and valid (*b*) lease, ALL THAT messuage, tenement, and premises, situate and being on the side of street, in the parish of , in the county of , and numbered in the said street, with all and singular the appurtenances thereunto belonging, together with the joint use of the Consideration. Agreement. When works are finished. To grant a lease. Parcels.

(*a*) If it be an underlease, say, "his executors, administrators, or assigns," UNDERLEASE.

(*b*) "underlease,"

FINISHING, OR UNDER-LEASE.

court or passage behind the same, in common with the occupiers of the adjoining houses, To HOLD to the said [*lessee*], his executors, administrators, and assigns, from the day of for the full term of years, AT AND UNDER the yearly rent of pounds, payable half-yearly, on Midsummer-day and Christmas-day (and each half-year's rent to be paid in advance) (*c*), free and clear of and from the sewer rate, and all and every other rate, tax, charge, assessment or imposition whatsoever, either parliamentary or parochial, to which the landlord, tenant, or premises is or are, or hereafter shall or may be liable. WHICH said indenture of lease, and a counterpart thereof, are to be prepared by the solicitor of the said [*lessor*], at the costs and charges of the said [*lessee*], his executors and administrators, and are to contain the several covenants, clauses, provisoes, agreements, and restrictions, usually contained in leases of houses in London and Westminster (*d*) ; and moreover a covenant

Term.

Rent.

To be paid half a year in advance.

Free from taxes.

Lease and counterpart to be prepared by lessor's solicitor at lessee's costs;

and to contain usual clauses.

And to pay the rent in advance.

(*c*) "for the first two years of the said term,"

This is an unusual clause; but circumstances sometimes render it prudent.

Underlease.

(*d*) If it be an underlease, say,

"and such other covenants, provisoes, and agreements on the part of the lessee, as are contained in the lease whereby the said [*lessor*] holds the said premises; AND IT IS HEREBY FURTHER AGREED between the said parties, that the said [*lessor*] shall not be required to produce any further evidence of the title to the said premises than a lease for years from [*original lessor*] to ([*original lessee*], and an assignment thereof from him to) the said [*lessor*], and that the said [*lessor*] shall covenant to produce the said lease (and assignment), and to permit the said [*lessee*], his executors, administrators, and assigns, at his or their own charges, to take or have attested copies thereof; and also a covenant to indemnify the said [*lessee*], his executors, administrators, and assigns, from all losses, costs, charges, damages, demands, and evictions, which he or they may sustain or be put unto on account of non-payment of the rent, or

Lessor not to produce freehold title.

on the part of the lessee for payment of the said rent half-yearly (in advance) as aforesaid, during the whole of the said term, with power to distrain on nonpayment thereof; *and* for painting twice in oil colours all the outside wood and iron work of the said premises once in every third year of the said term; (*and* (*e*) for painting all the iron columns, in front of the said premises, of a Bath stone colour, every fifth year, and not oftener, between the *first* and *tenth* day of *May*, with anti-corrosian paint; *and* at the same time for painting in good oil colours the outside shutters of the shop and street door of an oak colour, and also at the same time to colour and clean all the stucco and Bath stone work of the said premises and colonnade, of a Bath stone colour, in order to preserve and keep up the character and uniformity thereof with the adjoining premises, forming the west side of the said street; *and also* for painting and papering the interior of the said premises once in every seventh year of the said term; *and also* proper and necessary covenants for prohibiting and restraining the lessee from altering the front or any part of the exterior of the said premises, without licence in writing of the lessor; *or* in any manner writing upon or disfiguring, or fixing any shew or sign-board upon the said columns or colonnade, or any part of the said premises, except writing the name and trade or business of the occupier over or on the sides of the shop and street door; *and also* not to expose any goods or other articles for sale outside the said premises; *and also* not to use any lamps, flambeaux, fireworks, or illuminations, upon or over the said colonnade, or any part thereof, on any occasion whatever;) *nor* to use or carry on any noisome or dangerous or offensive trade or business therein or thereupon, and particularly the trade and business of a print or caricature seller, or pub-

FINISHING, OR UNDER-LEASE.

To paint outside every third year.

To paint every fifth year the iron columns,

outside shutters, and street door,

and to colour and clean the stucco and Bath stone work and colonnade.

To paint and paper interior every seventh year.

Not to alter the front or exterior of premises, without consent.

Not to fix shew-board, &c. except name and trade, over or on the side of shop or street door.

Not to expose goods for sale on outside.

Not to use lamps, &c. upon or over colonnade.

Not to carry on dangerous or offensive trades.

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nonperformance of the covenants, conditions, or agreements reserved or contained in the same original lease, by the said [*lessor*], his executors, administrators, or assigns *;"

(*e*) These are special covenants.

* *Vide* Com. Dig. *Covenant* (A. 4.) Raym. 257.

FINISHING, OR UNDER-LEASE.

lic auctioneers; *or* (*f*) any trade, business, mystery, or occupation, which shall or may be deemed hazardous on account of fire, and thereby subject the said premises to more than the common premium of insurance; (*and* generally to do every thing requisite and necessary for preserving and maintaining the due character and uniformity of the said premises, as part of the west side of the said street; *and* not to make, or permit to be made, without license from the lessor, any door way, access, or communication whatever into or from the from, by, or through the said premises agreed to be demised, or any part thereof;) *and* not to alter, remove, or take away any of the doors, windows, or partitions of the said premises without license of the lessor in writing; *and also* the usual covenants for repairing and keeping in repair the said premises, and every part thereof, (and the colonnade in front of the same,) and yielding and delivering up the same at the end or sooner determination of the said term, in good and proper repair, with all and every the fixtures, erections, and improvements which shall or may be made, fixed, or fastened, or set up in, upon, or about the said premises (save and except the counter and fittings up of the shop); *and* for liberty for the lessor to enter and view the said premises twice or oftener in every year, and to give notice of the repairs, and for the lessee to repair accordingly within three months after every such notice; *and* the usual proviso for re-entry on non-payment of the rent (or on breach or non-performance of covenants): AND THE SAID [*lessee*], for himself, his executors, and administrators, doth hereby agree to accept such lease on the terms and conditions aforesaid, and execute a counterpart thereof when required, and to pay the charges for the same when prepared, and of this agreement (and a duplicate hereof); *and also* that the said [*lessee*], his executors or administrators, shall and will on or before the day of now next, at his and their own costs and charges, paper all the rooms in the first, second, and third floors of the said house with proper and suitable paper and bordering; *and also* set up a dresser and shelves,

To preserve the uniformity of premises.

Not to make a passage through premises without consent.

Not to alter or remove doors, &c. without license.

To repair, &c. and deliver up at end of term.

With the fixtures, &c.

except the counter, &c.

Lessor to enter to view and give notice of reparations.

Lessee to repair accordingly.

Power of re-entry.

Covenant by lessee to accept lease, execute a counterpart, and pay law charges.

To paper rooms in first, second, and third floors.

(*f*) This is introduced when the lessee is not bound to insure.

and a proper and substantial leaden cistern cased with wood, with leaden water pipes thereto, in the kitchen, which with all other fixtures, fastenings, erections, and improvements, shall remain at the end of the said term for the benefit of the said [*lessor*], his (*g*) heirs and assigns.

IN WITNESS, &c.

FINISHING, OR UNDER-LEASE.

To make dresser and shelves and cistern in kitchen.

(*g*) If it be an underlease, "his executors, administrators, and assigns."

UNDERLEASE.

AGREEMENT *for a Lease of* TITHES, *with or without the* GLEBE LANDS (*a*).

FOR LEASE OF TITHES, WITH OR WITHOUT GLEBE LANDS.

ARTICLES OF AGREEMENT made and entered into this day of 18 , BETWEEN [*lessor*],

(*a*) By the common law, churchmen after being completely inducted into their benefices, and reputed to be seised in fee in right of them, enjoy as ample a power of leasing as any person seised of a temporal estate in his natural capacity, provided the consent of necessary parties was previously obtained. Watson's Clergyman's Law, 424, 4th ed. c. 41. Co. Litt. 44. a. 4 Bac. Abr. 39. Gwill. ed. *Leases* (E). To leases by ecclesiastical corporations *aggregate*, no consent was essential. But to those made by *sole* ecclesiastical corporations, as arch-bishops, bishops, deans, arch-deacons, prebendaries, parsons, and vicars, the consent and confirmation of others were required in order to bind their respective successors. Toller on Tithes, 24. Thus leases made by arch-bishops and bishops are to be confirmed by the dean and chapter, or deans and chapters, if there be several chapters: leases made by deans are to be confirmed by the bishop and chapter; leases made by prebendaries and arch-deacons, by the bishop, dean, and chapter; but if the King be patron of a prebend, then the King and dean and chapter, and not the bishop, ought to confirm the grant; leases made by parsons and vicars, by their patrons and ordinaries; and leases made by the incumbent of a donative, by the patron alone. But if a parson make a lease, which is confirmed by the bishop only, who is patron, without the dean and chapter, who ought to have joined, it will bind the successor during the lives of the bishop and incumbent, although the bishop be translated. But leases made by parsons, vicars, prebends, &c. *before* in-

Leases by ecclesiastical persons.

Confirmation necessary to leases by sole ecclesiastical corporations.

FOR LEASE OF TITHES, WITH OR WITHOUT GLEBE LANDS.

duction or installation, &c. although confirmed, are not binding on the successor. Degge's Parson's Counsellor, 120, 6th ed. c. 10.

What leases ecclesiastical persons may now make.

Considerable alteration, however, is introduced by the several enabling and restraining statutes, namely, 32 Hen. VIII. c. 28. 1 El. c. 19. 13 El. c. 10. 14 El. c. 11, and 14. 18 El. c. 11. 43 El. c. 29. and 1 Jac. 1. c. 3. Their principal result is, that all colleges, cathedrals, and other ecclesiastical and eleemosynary corporations, and all parsons and vicars, are restrained from making any leases of their lands, unless under the following regulations:—They must not exceed twenty-one years, or three lives, from the making.—The accustomed rent or more, must be yearly reserved thereon; and where a part of lands usually let for a certain rent, be leased, the ancient rent must be reserved *pro rata*, 39 and 40 Geo. III. c. 41.—Houses in corporation, or market-towns, may be let for forty years, provided they be not the mansion houses of the lessors, nor have above ten acres of ground belonging to them; and provided the lessee be bound to keep them in repair; and they may also be aliened in fee simple for lands of equal value in recompence. No lease (by the equity of the statute) shall be made without impeachment of waste. Co. Litt. 45. a. All bonds and covenants tending to frustrate the provisions of the statutes of 13 and 18 Elizabeth, shall be void (*a*).

Confirmation still requisite to bind the successor.

These restrictive statutes do not by any construction, enable any persons to make such leases as they were by common law disabled to make. Therefore a parson, or vicar, though he is restrained from making longer leases than for twenty-one years or three lives, even *with* the consent of patron and ordinary, yet is not enabled to make any lease at all, so as to bind his successor, *without* obtaining such consent. Co. Litt. 44. b. Although leases contrary to these acts are declared void, yet they are good against the *lessor* during his life, if he be a sole corporation; and are also good against an aggregate corporation so long as the head of it lives, who is presumed to be the most concerned in interest. For the act was intended for the benefit of the successor only; and no man shall make an advantage of his own wrong. Co. Litt. 45. a.

There is another restriction with regard to college leases, by statute 18 Eliz. c. 6. which directs that one third of the old rent, then paid, should for the future be reserved in wheat or malt, reserving a quarter of wheat for each 6*s*. 8*d*. or a quarter of malt for every 5*s*. or that the lessees should pay for the same according to the price that wheat and malt should be sold for, in the market next adjoining to the respective colleges, on the market-day before the rent becomes due. 2 Bla. Com. 321.

(*a*) [A lease by a vicar of uninclosed and unreclaimed land was held not to bind his successors, as a demise to be valid under the 13 Eliz. c. 10. § 3. must be of lands before demised. *Doe d. Tennyson* v. *Lord Yarborough*, 1 Bing. 24. *Ed.*]

FOR LEASE OF TITHES WITH OR WITHOUT GLEBE LANDS.

A master or fellows of a college, dean and chapter, master or guardian of an hospital, parson, vicar, or any other, having any spiritual or ecclesiastical living, may make concurrent leases, with the necessary confirmations; but by the 18 El. c. 11. s. 2. these leases must be within *three* years of the determination of the former lease, by expiration, surrender, or ending. Degge, 119. c. 10. As the words, "*or any other*, &c." come after parson or vicar, who are of an inferior order, they do not comprehend bishops, who are of a superior order; Wood's Inst. 261. 10th ed. consequently this statute does not extend to bishops, and therefore they may make a concurrent lease, with the confirmation of the dean and chapter; but it must take effect from the making; and as the second lessee can have no benefit from it, so long as the first lease endures, because the second lease is in effect void for all the years that are to come of the first lease; those years which are to come of the first lease, and those which remain of the second lease, making in all no more than twenty-one years at one time; therefore such a lease is not against the exception. 1 Eliz. c. 19. 4 Bac. Abr. 64. Gwill. ed. *Leases* (E) rule 3. But a bishop cannot make a concurrent lease for life to bind the successor, when there is a precedent lease for years in being, because by the words of the statute upon leases made by bishops, the ancient rent must be reserved, and yearly payable; and the rent reserved upon the grant for three lives in reversion, although it be due, yet the successor has no remedy for it during the lease for years, by distress; nor by action of debt, before the statute 5 Geo. III. c. 17. because it was reserved upon a lease for life; nor has he any remedy by assize, for he has no seisin: and so it is not due or payable, according to the intent of the statute, *Marler* v. *Wright*, Cro. Eliz. 141. But if the lease for lives were made to the lessee for years, as the previous lease for years would merge in the estate for life, or rather would be surrendered by accepting the lease for life, the successor would be bound by it. Nor can a bishop make a concurrent lease for years to bind the successor, when there is a precedent lease for life in being, Degge, 119. c. 10.

What concurrent leases may be made by ecclesiastical persons.

It seems, that if a lease not warranted by the statutes, be made of tithes for years by a *bishop*, this is not void, but voidable only in respect even of the successor; and if the latter accept rent, it amounts to a confirmation. Bro. Abr. *Acceptance*, pl. 9. *Lease*, pl. 18. Moor, 778. For it is said, 4 Bac. Abr. 120. Gwil. ed. *Leases* (H), where many authorities are cited as to these matters, but not all strictly in point, that before the third council of Nice in the year 710, bishops might by their sole alienation have bound the successor for ever; and although by that council such alienations are restrained as injurious to the church, and

Leases for years of *tithes* by bishops are only voidable by the successor.

FOR LEASE OF TITHES WITH OR WITHOUT GLEBE LANDS.

the confirmation of the dean and chapter made necessary, yet this is only as to binding the successor. For the fee simple is reputed to continue in the bishops, and therefore leases for years made by them subsist after their death, or removal, till avoided by the successor, with the aid of the canons made at that council, which have received a sanction from our law. Plowd. Com. 264. But *parsons* and *vicars* never had such power of alienation; and though they have been deemed for the *benefit* of the church and their successors to be seised of a sort of qualified *inheritance*, they have been allowed an estate for *life* only, as to any acts that might prejudice the next incumbents. Co. Litt. 341. a. Therefore, leases for years by parsons and vicars not confirmed by the patron and ordinary, become absolutely void by the death, or cession of the lessors, and are not confirmed for the residue of the term against the successor by his acceptance of rent. Leases for years are expressly mentioned, because leases for life or lives of tithes made by any ecclesiastical persons, are, on the principles of the common law, without the aid of the statutes, which will be presently mentioned, valid only against the lessors themselves, and are absolutely void against the successor, and incapable of being ratified by his acceptance of rent; and, also, because the leases for life or lives by parsons or vicars of things that lie in livery, as of their glebe land, are avoidable only by reason that such leases being freehold could not be effected without the solemnity of livery of seisin, where any thing corporeal was conveyed, and consequently required the entry of the successor to defeat them, who could not so enter after rent received, or any other act done by him in affirmance of the lease. Bro. Abr. *Acceptance*, pl. 26. *Lease*, pl. 19. See *Brewer* v. *Hill*, Gwill. 1421. 2 Anstr. 413. S. C. In like manner, if a disseisor or other wrongful possessor of lands without the right thereto conveys an estate for life by livery of seisin, a freehold interest actually passes; which is founded on the efficacy of this solemn mode of assurance, without any regard being paid to the imbecility of the alienor's title. This digression was necessary to explain, why the above observation confines the doctrine of leases by parsons and vicars without confirmation by patron and ordinary, being wholly void on the death or removal of the lessor, and incapable of being substantiated against the successor, to leases for years only.

Leases for years of tithes by parsons and vicars, not confirmed by the patron and ordinary, do not bind the successor, although he accept the rent.

Leases by ecclesiastical persons, *de facto*.

It seems, however, that the leases of parsons confirmed by patron and ordinary, and otherwise conformable to the statutes, are good, although made by a parson *de facto* only, and who is afterwards lawfully deprived of his benefice: 1 Roll. Abr. 476. (F) pl. 1. Cro. Eliz. 775. Mo. 606. 5 Vin. Abr. 366. pl. 1. but it is different as to a lease by a bishop *de facto*, although confirmed by the dean and chapter. *Ronan Obrian et al* v. *Knivan*, Cro. Jac. 552, 554.

FOR LEASE OF TITHES WITH OR WITHOUT GLEBE LANDS.

The acceptance of rent, which is to affirm the voidable lease of a preceding bishop, must be by him, who is perfectly in possession as successor, at least according to one case, Palm. 175, in which such acceptance of rent was deemed unavailable, because the successor had not at the time obtained restitution of the temporalties: but it may be questioned, whether that point would now receive the same adjudication. It appears more equitable, that the rule should be mutual; Poph. 121. that if the lease be voidable both lessor and lessee should be bound by affirmance; or if absolutely void without entry, or other ceremony, both should be discharged. In the latter instance the successor has no remedy under the covenants in the lease, nor for the stipulated rent accrued in his own time; but it is apprehended he might maintain an action for use and occupation, or for the mesne profits after a recovery in ejectment.

Acceptance of rent by succeeding bishop affirms a voidable lease.

Besides the restrictions above-mentioned and alluded to, there existed till very lately another mode, by which the leases of beneficed clergymen were rendered void. This happened in case of their non-residence, it being first so enacted by statute 13 El. c. 20. But that statute, with all its legislative explanations, additions, and alterations, and so much of the act 3 Car. 1. c. 4. as make the first act perpetual, were by statute 43 Geo. III. c. 84. s. 10. repealed; and that act was repealed by the 57th Geo. III. c. 99. and new regulations made for enforcing the residence of beneficed clergy; and by the last mentioned act, it is provided that, clergymen shall not take to farm above eighty acres of *land* without the consent of the bishop; but there is no restriction in this act against a lease of *tithes* being made to clergymen.

Non-residence of clergymen does not avoid their leases.

Clergymen may be farmers of land or tithes.

It has been before intimated that freehold leases of tithes were heretofore void in favor of the successor. Thus, where a bishop being seised in fee of tithes in right of his bishoprick, made a lease thereof for three lives, rendering the ancient rent at which they had usually been demised; the lessor died, and the question was, whether the lease was binding upon the successor: it was resolved, that it did not bind him; for he had no remedy for the rent, either by distress, or by action of debt, because it could not be called rent; but it would have been otherwise if it had been a lease for years, for in such case an action of debt may be maintained. Moore, 778. Annual payments reserved out of incorporeal hereditaments, were not by our old lawyers allowed to be properly rents, for this reason, that they were not recoverable by distress, the terms being convertible, 2 Wooddeson's Lectures, 67, *et seq.* Such payments could not be distrained for, because incorporeal hereditaments, as creatures of the imagination, have no locality; Noy's Maxims, 112, 9th ed. and by the ancient statute of

Freehold leases of tithes were formerly void against succeeding bishop.

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Marlbridge, 52 H. III. c. 15, (which is said to be but an affirmance of the common law, 2 Inst. 131) distresses must be locally made. Consequently, if a yearly payment had been reserved on the demise of tithes, and something corporeal, as a barn, jointly, the same was considered as a rent issuing wholly out of the barn in respect of the remedy by distress. Gwill. 359. For which reason, it is frequently advisable, that the lessee should give the lessor a power of entry and distress, on his lands and tenements, goods and chattels generally; which as it gives a summary remedy to recover the rent, is preferable to the tediousness and expense of an action at law. *See the* FORM, *post*, 76. Neither could the successor maintain an action of debt on a freehold demise of tithes during the continuance of the estate for life or lives; because that is a personal action, and to recover rents so reserved would be to recover seisin, which species of judgment is descriptive of a real action. Hence it is, that even acceptance of rent by the succeeding bishop, would not have availed to substantiate a freehold demise of tithes, because if the rent afterwards became in arrear, he was without remedy under the lease, being precluded from the easy and obvious resources of distress and action of debt, and also from bringing a species of real action, called an assize of rent, for such payments out of things incorporeal are no legal rents. 2 Cro. 173. 8 Co. 46. a.

Ecclesiastical persons may by statute bring an action of debt for rent of tithes reserved on leases for lives or years.

Now, however, by the statute above alluded to, 5 Geo. III. c. 17. the same power of bringing actions of debt, which by a former law, 8 Ann. c. 14. s. 4. had been indulged to lessors against tenants for life as to proper rents, is extended to sole and aggregate ecclesiastical corporations, heads and fellows of colleges, and others having power of leasing, to recover rent reserved on tithes and incorporeal hereditaments, although leased for life or lives. The statute of Geo. III. recites, that it may be doubtful whether by the laws in being such lessors as aforesaid could grant leases of tithes or other incorporeal hereditaments, which lie in grant, and not in livery, for three lives or for twenty-one years, although the ancient rent or yearly sum is thereby reserved, and all other requisites prescribed by the acts of parliament are justly observed, by reason that there is generally no place wherein to distrain for such rent or yearly sum; and that it may also be doubtful, whether in cases of such leases for life or lives, there was any remedy by action of debt or otherwise; but it is not represented as in any degree questionable, whether the lessors and their successors might have that personal suit on a demise for *years*: and the other doubts recited may perhaps be thought resolved by the authorities stated in this note, except as to the power of such ecclesiastical and other persons to grant leases for years of tithes and other incorporeal hereditaments, because,

FOR LEASE OF TITHES WITH OR WITHOUT GLEBE LANDS.

although here the remedy by action of debt might be had, yet the other remedy by distress failing, and so the payment reserved not being properly a *rent*, the ancient rent could not be said to be reserved, which is one of the requisites prescribed by the acts of parliament. See Hargr. ed. Co. Litt. 44. b. (3). After these recitals, the new statute proceeds to give validity to all such leases of tithes and incorporeal hereditaments (with a saving, however, of the restrictions imposed by the founders on colleges, and of the like local regulations), and allows the *action of debt* to be maintainable by the lessors themselves, their personal representatives, or their successors, against the lessees, their heirs, executors, administrators, or assigns, for the rent due on such leases, whether made for *life* or for *years*. Toller on Tithes, 26.

Action of debt lies against assignee of lessee for years of tithes at common law.

From the cases *Talentine* v. *Denton*, Cro. Jac. 111. *Dalston* v. *Reeve*, 1 Ld. Raym. 77. and the opinion of Lord Hale, and also from the inclination which the court discovered to support the demise in the case of the *Dean and Chapter of Windsor* v. *Gover*, 2 Saund. 230, as a lease, with all the properties incident to a lease of corporeal hereditaments, it should seem, that a lease *for years* of tithes was good at the common law, and the rent went along with the reversion, and the assignee of the lease was bound to pay it, and the reversioner might bring an action of debt for the rent against the assignee. However, this point appears to have received a more solemn decision in a subsequent case, where it was held, that a covenant in a lease for years of tithes, made by the lessee respecting them, should run with the tithes and bind the assignee of the lessee; and consequently, that an action would lie against him for a breach of such covenant. That was an action of covenant by a rector of a parish against the assignee of his lessee for years of his tithes, who had covenanted for himself, his executors, administrators, and assigns, not to let any of the farmers of the parish have any part of the tithes, without the plaintiff the lessor's consent: and the breach assigned was, that the defendant, the assignee, after the premises came to him by assignment, let some farmers in the parish have part of the tithes without the plaintiff's consent. After verdict for the plaintiff, it was objected in arrest of judgment, that the action did not lie against the assignee, for it was a mere personal and collateral covenant binding the lessee only; and that tithes were incorporeal, lying in grant, and therefore such a covenant could not run along with them, as it would with lands which lay in livery; and that a rent could not be reserved out of them, for if a lease were made of them by deed for years, it was good by way of contract, to have an action of debt against the lessee, but the lessor could not distrain; and that the assignee of the tithes was not chargeable with the rent, and consequently

Action of covenant lies against assignee of lessee of tithes at common law.

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the defendant could not be chargeable with breach of covenant in that case.—But it was answered and resolved by the court, that the action was maintainable against the assignee; for as to the objection that tithes were incorporeal, and therefore the assignee was not bound, they answered, that tithe was a tenth part of the profits of the land; the profits of the land were the land itself; tithes were tangible and visible; might be put in view in an assize; an ejectment lay for them; a *præcipe quod reddat* lay of a portion of tithes, and they were realized by statute 32 Hen. VIII. c. 7. s. 7; a warranty might be annexed to incorporeal inheritance, and that they had every property of an inheritance in land, except that they lie in grant and not in livery; and Dyer, 85. a. b. was cited. And as to the objection that a lease of tithes was not good, and that the assignee was not chargeable with the rents, they cited the argument of Saunders, *Dean and Chapter of Windsor* v. *Gover*, 2 Saund. 230. which they said was an exceeding good one, and with which they concurred; and they also cited *Tippin* v. *Grover*, Sir T. Raym. 18. and said that debt lay for rent, reserved upon a lease for years of tithes at the common law. *Bally* v. *Wells*, 3 Wils. 25.

It seems that lay impropriators may bring an action of debt against assignee of lessee for years.

The statute 32 Hen. VIII. c. 7. s. 7. having put tithes in the hands of lay impropriators upon the same footing with any of their corporeal hereditaments, and turned them, as it were, into lands and tenements, it seems to follow, that since that statute a lease made of tithes by a lay impropriator for *years*, has the same properties, except as to the remedy by distress, as a lease made by him of any of his lands and tenements; and that therefore he may bring an action of debt for rent against the assignee of his lessee of tithes, in the same manner as he can do against the assignee of a lease of his lands. Wms. n. 2 Saund. 304. a.

But it seems doubtful as to leases for life of tithes by lay impropriators.

But as the act of parliament names divers corporations sole, and aggregate, and then adds, "any other person or persons having any spiritual or ecclesiastical promotions," without any mention of *lay impropriators*, therefore a question has been raised of what remedy at common law, without the aid of a court of equity, a lay impropriator could avail himself to recover the yearly payments reserved on a lease granted by him of his tithes for *life* or lives, if he should so demise them. 2 Wooddeson's Vinerian Lectures, 71. But perhaps that law now giving such payments the denomination of rents, they might fall within the provisions of the statute of Anne above mentioned; if not, there is this defect which still remains to be supplied. Toll. 31.

Freehold leases of tithes are governed by common law principles.

Freehold leases of tithes are regulated by the same common law principles as the like *quantum* of interest or estate in corporeal hereditaments, whether the demise is made by a spiritual rector seised in right of his church, or by a lay impropriator seised of a rectory, or a portion

FOR LEASE OF TITHES WITH OR WITHOUT GLEBE LANDS.

of tithes being a temporal inheritance, as appears by the following case of *Edmonds* v. *Booth*. Yelv. 131. Gwill. 228. S. C. *Rabbit* being seised of land to him and his wife and to his heirs, took a lease from *Booth*, parson of *B*. of all his tithes of this land, by indenture, to hold *from Michaelmas next*, to him and his heirs during the life of *Booth*. The lessee died, and his widow having the land for her jointure, married *Fowler*, who demised it to *Edmonds;* and the heir of *Rabbit* being entitled to the tithes under the lease to his ancestor (*Fowler* and his wife having no claim to them) demised them also to the same tenant, who thus held the land and the tithes by distinct titles from several persons. Under these circumstances *Booth* sued *Edmonds* in the spiritual court for tithes of the land in derogation of the lease granted by himself; and on an application to the Court of King's Bench to stay such suit, it was allowed to proceed by the opinion of the majority of the judges, (then being five), on the ground that the lease to *Rabbit* was absolutely null, because generally by the common law no freehold interest can be granted commencing *in futuro*, as here, from the ensuing Michaelmas. The case is thus recited, not so much to evince this point as to elucidate another, which could not otherwise be explained, and seems to merit some attention. It was insisted in support of the lease, that it was made only of the tithes of that land of which *Rabbit* was then the owner, so that it did not enure by way of interest, but by way of discharge and retainer; for a man cannot have tithes of his own land; and then a *discharge* may well commence at a day to come. But to this it was answered, that the pleadings allege that by force of the lease in question, *Rabbit* was seised of the tithes to him and his heirs during the life of *Booth*, and being so pleaded by way of interest, they, as judges, could not intend or construe it otherwise. Such lease cannot enure by way of discharge, for it contains no words to that effect, which proves it was not intended by the parties to operate but by way of interest; and that is more beneficial to the lessee: for if it should enure by way of discharge only, it is such a privilege annexed to the land as cannot be granted over; but it may, if by way of interest, and so it seemed understood by the persons concerned, for the wife was owner of the land, but the son took upon himself to be owner of the tithes, which could not be if the first lease had enured by way of discharge.

Contract for tithes may operate by way of discharge.

Such a contract, however, in the nature of a demise, may enure (with apt words for that purpose) by way of discharge from tithes, being effected by deed, and entered into for a reciprocal valuable consideration, as an annual payment; and it may be good during the incumbency, and be explicitly extended to the farmers and tenants of a landlord so contracting. 2 Cro. 137.

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Demise of tithes for such time as lessor shall continue rector, &c. passes a freehold.
If lands be also demised for life, livery is necessary.

Again, a demise of tithes during such time as the lessor shall continue rector or vicar, passes to the lessee a freehold, such being the estimation of uncertain interests in all species of real property, which may possibly endure for any life or lives; *Brewer* v. *Hill*, 2 Anst. 413. Gwill. 1421. S. C. and with respect to incorporeal hereditaments as tithes are, and lie in grant, the mere delivery of the deed has the same force as livery of seisin in the case of land; but if a rectorial or vicarage house, (which are corporeal hereditaments, and lie in livery) are demised with the tithes, and the latter only pass as parcel of the rectory or vicarage, the intended freehold demise is ineffectual for the whole, as conveyances at common law without livery of seisin. Toll. 32. [See also *Bowyer* v. *Pritchard*, 11 Pri. 115.]

Leases by ecclesiastical persons in the city of London.

By the 22 Ch. II. c. 11. s. 61. the dean and chapter of St. Paul's, London, are enabled to make leases to the city of London, of certain lands set out for holding Newgate-market, in the city of London, for the term of forty years, reserving a rent according to the provision of that act; and so from forty years to forty years for ever, at the same yearly rent, and one year's rent to be paid by way of fine upon every renewal. And by the same act, parsons and vicars of parishes within the city of London, are empowered to make building leases with the consent of the patron and ordinary, of their glebe lands within the said city, for any term not exceeding forty years, and at such yearly rents, without fine, as can be procured for the same.

Contracts for letting houses, in which any spiritual persons shall by order of the bishop be required to reside, shall be void.

By the 57 Geo. III. c. 99. s. 32. it is enacted, "That all contracts or agreements made for the letting of the house of residence, or the buildings, gardens, orchards, and appurtenances necessary for the convenient occupation of the same, belonging to any benefice, to which house of residence any spiritual person shall be required by order of the bishop, as therein mentioned, to proceed and to reside therein, or which shall be assigned or appointed as a residence to any curate by the bishop, shall, upon a copy of such order, assignment, or appointment being served upon the occupier thereof, or left at the house, be null and void; and a copy of every such order, assignment, or appointment, shall immediately on the issuing thereof be transmitted to one of the churchwardens of the parish, or such other person as the bishop shall think fit, and be by him forthwith served on the occupier of such house of residence, or left at the same. And any person continuing to hold any such house of residence, or any such building, garden, orchard, or appurtenances, after the day on which the said spiritual person shall be directed by such order to reside in such house of residence, or which shall be specified in any such assignment, or appointment, and after service of such copy as aforesaid, or the same being so left as aforesaid, shall forfeit the sum of forty shillings for every day he shall without the permission of the bishop in writing for that purpose obtained, wil-

Holding possession after the day appointed for residence.

Penalty.

FOR LEASE OF TITHES WITH OR WITHOUT GLEBE LANDS.

fully continue to hold any such house, building, garden, orchard, or appurtenances, together with the expence of serving such order, in case it shall have been deemed necessary specially to serve such order, to be allowed by the bishop issuing the order or making such assignment or appointment as aforesaid, and to be recovered and applied in like manner as the penalties for non residence are directed to be recovered and applied by the provisions of this act; and it shall also be lawful for the spiritual person so directed to reside as aforesaid, or curate to whom any such residence is assigned, to apply to any justice of the peace or magistrate of the county, riding, province, city, or place, for a warrant for the taking possession thereof; and the justice of the peace to whom any such order for such possession is produced, shall, and he is hereby required thereupon to give a warrant for such possession, and possession may thereupon be taken of such house under such warrant at any time in the day time, by entering the same by force, if necessary, without any other proceeding by ejectment or otherwise (*a*).

And spiritual person directed to reside, may have warrant for possession from justice.

A lay impropriator in fee, may lease his whole rectory or a parcel of it, as the tithes of a particular farm, for any number of years without restraint; and if he demises such parcel, and subsequently to that lease makes a grant of the rectory generally, the grantee will be entitled to the tithes of that farm, after the lessee's term is expired, though if the lease be made (as commonly) to the occupier of the land, there is, during its continuance, a suspension of actual payment of these tithes, for they exist in speculation as parcel of the rectory; and the reversion in them subject to the term passes to the grantee. *Dickenson* v. *Reade*, Gwill. 358. Toll. on Tithes, 34.

Lay impropriators may lease their tithes for any number of years.

As tithes are incorporeal hereditaments lying in grant, all leases or grants of them must be by deed; and no parol demise, nor any written instrument short of a deed, will be effectual to pass them *legally* to a stranger, though a parol agreement may be sufficient to authorise the occupier to keep them by way of retainer. *Keddington* v. *Bridgeman*, *Bunb.* 2. *Tanner* v. *Small*, Yelv. 95. Het. 121. *Adams* v. *Waller*, Gwill. 1204. *Anon.* Godb. 354. *Withy* v. *Saunders*, 1 Leon. 23. *Nelson* v. *Woodward*, Cro. Eliz. 188. 249. *Hawkes* v. *Brayfield*, Cro. Jac. 137. *Brewer* v. *Hill*, 2 Anst. 419. *Swadling* v. *Piers*, Cro. Jac. 613.

Leases and conveyances of tithes must be by deed.

(*a*) [A dean and chapter, although they covenant with their lessee not to cut or make sale of any timber trees, except for the necessary repairs of their church buildings, may nevertheless insist upon cutting the whole of the timber for the purpose of repairs; and a bishop can only be prevented from exercising such a right by prohibition, or by injunction at the suit of the Crown. *Wither* v. *D. of Winchester*, 3 Meriv. 421. And see also *Herring* v. *D. of St. Paul*, 3 Swans. 492. *Ed.*]

FOR LEASE OF TITHES WITH OR WITHOUT GLEBE LANDS.

of, &c., of the one part, and [*lessee*], of, &c. of the other part.

Agreement to grant lease.

FIRST, the said [*lessor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*lessee*], his executors, administrators, and assigns, in consideration of the rent, covenants, and agreements hereinafter mentioned and contained, that he the said [*lessor*] shall and will (on or before the day of now next, or) when thereunto required in writing by the said [*lessee*], his executors, administrators, or assigns, demise and lease unto the said [*lessee*], his

Parcels.

executors, administrators, and assigns (*b*); ALL and all manner of tithes, as well great as small, which shall arise, grow due, or belong to the said [*lessor*], within the parish of aforesaid, as rector of the same parish, or

Term.

otherwise howsoever (*c*); TO HOLD the same unto the said [*lessee*], his executors, administrators, and assigns, for the

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4 Bac. Abr. *Leases* (E) 5. Mirehouse on Tithes, 175. And if a tithe owner agree with another to permit him to take the tithes of corn and hay for six years, and permit him accordingly, this is a good consideration (though not valid as a lease, and though no legal interest passes in the tithes) to found an action to recover the payment stipulated for in return. *Eaton* v. *Sherwin*, Skin. 113. 2 Show. 307. But a *quasi* lessee of tithes by parol, cannot maintain a suit for them, without making the *quasi* lessor a party in the suit. *Henning* v. *Willis*, Gwill. 898. See also Ellis, on Suits for Tithes in Equity, 25.

GREAT TITHES.

(*b*) If it be of the great tithes only, say,

"all and all manner of tithes of corn, grain, and hay, and other great or rectorial tithes and tenths which shall arise, &c." as above.

GLEBE, &c.

(*c*) If of the glebe, &c. also add,

"*and also* ALL THOSE the glebe lands, belonging to the rectory of the said parish, and the orchard adjoining to the parsonage house, together with the barn, hogsty, and carthouse, and the yard where they stand, also belonging to the said rectory or parsonage, with their appur-

Except timber, &c.

tenances, (EXCEPT the timber and timber trees, and the loppings thereof, and the loppings of all other trees);"

FOR LEASE OF TITHES WITH OR WITHOUT GLEBE LANDS.

term of years, *if* the said [*lessor*] should so long live, and continue rector (*d*) of the said parish; AT the yearly rent of pounds, clear of all taxes and deductions whatsoever, to be paid half-yearly, on the day of and the day of ; and the first half-yearly payment to be made on

Rent.

TITHES OF A PARTICULAR FARM.

If it be for a lease of the tithes of a particular farm, say, "for or in respect of ALL THAT farm, with the several closes, pieces, or parcels of land, with the appurtenances, called farm, situate in the said parish of , and now in the occupation of the said [*lessee*], as tenant thereof under [*landlord*], and the cattle, oxen, sheep, pigs, poultry, farm-yard and dairy, and other titheable animals and things being, arising, or growing thereon."

Continuance of lease of tithes, without covenants;

(*d*) If a parson make a lease for *years* of his tithes, it is *implied* by law, "if he so long continue parson." *Wheeler* v. *Heydon*, Cro. Jac. 328. 14 Vin. Abr. 68, pl. 11. 7 Bac. Abr. 19. Gwill. ed. *Verdict* (M). And the lease determines by his deprivation or resignation; and therefore, although it would be an addition in words, yet it is not any in substance. 2 Roll. Abr. 718, pl. 10. 21 Vin. Abr. 462, S. C.

with covenants.

So, if a parson make a lease for years if he so long live, *with covenants* for enjoyment accordingly, as his death before the expiration of the term determines the lease, there will be no breach of the covenant; but if he resign, or do any other act whereby he loses the living, an action of covenant will lie against him. *Rudge* v. *Thomas*, Roll. Rep. 403, 404. 2 Bulst. 202. 19 Vin. Abr. 148, n. pl. 1.

The reason of introducing "if he should so long continue parson."

Therefore it is usual to add this clause, "and shall so long continue parson or rector," which leaves him at liberty to avoid the lease by resignation or otherwise; because the lease is to continue no longer than whilst he continues parson; and in the mean time leaves it in his election, by any of these means to determine the lease. *Wheeler* v. *Heydon*, Brownl. 125. 4 Bac. Abr. 94. Gwil. ed. *Leases* (F).

Unjust deprivation.

And if a lease be made by a parson "*for so long* as he shall continue parson," and he is afterwards *deprived unjustly*, the lease is gone and determined, and shall have no longer continuance, although afterwards the deprivation be reversed: but it would be otherwise, if it were limited to continue *for twenty-one years, if he should so long live: per* Haughton, J. and *per* Doderidge, J. by the deprivation the lease is now gone; but if he appeal from the sentence, then pending the appeal he continues parson until sentence be given. *Wheeler* v. *Heydon*, 2 Bulst. 84. 10 Vin. Abr. 355, pl. 6.

FOR LEASE OF TITHES WITH OR WITHOUT GLEBE LANDS.

the day of now next (*e*). WHICH said indenture of lease, and a counterpart thereof, shall be prepared by the solicitor of the said [*lessor*], and shall contain, in addition to all usual and accustomed covenants on the part of the said [*lessee*], his executors, administrators, and assigns, in leases of the like nature; a covenant to repair, sustain, and uphold the chancel of the parish church of aforesaid during the said term (*f*); *and also* to exonerate, discharge, and save harmless the said [*lessor*], his executors and administrators therefrom (*g*); *and also* (*h*) a proviso, making void the said intended lease, on non-payment of the said rent twenty-one days after the same shall become due and be demanded, upon or at any time after the same twenty-one days, and not paid

Lease to be prepared by lessor's solicitor, and to contain usual covenants; and to repair chancel of parish church.

To indemnify lessor therefrom.

Proviso to make lease void on non-payment of rent, or breach of covenants.

(*e*) Add clause for additional rent for breaking up glebe lands, as in page 21, *ante*.

GLEBE, &c.

(*f*) If of the glebe, &c.

To repair buildings and fences.

"*and also* to repair, amend, maintain, and keep the said barn, hogsty, and carthouse, and the hedges, ditches, gates, pales, and fences of the said premises, in, by, and with all necessary and tenantable reparations, amendments, and cleansings whatsoever during the said term; *and also* to keep the said glebe lands in good heart and condition, according to the course of husbandry used and approved in the said parish. (*Add any other covenants agreed on, usual in agreements for leases of lands; for which see* 21, ante.)

To cultivate lands.

Other covenants.

(*g*) "respectively"

(*h*) If the agreement be for tithes only, or if it be probable that there may not be goods and chattels on the demised glebe, &c. sufficient to answer the distress, it may sometimes be prudent to add,

Power of distress.

"a power or grant enabling the said [*lessor*], and his assigns, in case the said rent should be in arrear, and unpaid twenty-one days after either of the said days of payment, and not paid when demanded, to enter upon and distrain the lands and tenements, goods and chattels of the said [*lessee*], his heirs, executors, and administrators, and thereby to levy and raise the sum or sums which shall be then in arrear and unpaid; *and also*"

FOR LEASE OF TITHES WITH OR WITHOUT GLEBE LANDS.

when demanded, (*or* (*i*) on breach or nonperformance of any of the covenants to be contained in the said lease on the part of the said [*lessee*], his executors, administrators or assigns, or on his or their bankruptcy, or insolvency): AND THE SAID [*lessee*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*lessor*], his executors and administrators, that he the said [*lessee*], his executors or administrators, will execute a counterpart of such lease, whenever the same shall be tendered; *and also* will pay the expense of preparing the same lease and counterpart, and also the expense of preparing this agreement (and a duplicate hereof). AND IT IS FURTHER AGREED, that the said lease shall contain a covenant on the part of the said [*lessor*], his heirs, executors, or administrators (*k*), that the said [*lessee*], his executors, administrators, or assigns, on regularly paying the said rent and performing the covenants to be contained in the said lease, shall hold and enjoy the said tithes (*l*) during the said term, if the said [*lessor*] should so long live and continue rector of the said parish, without any disturbance whatsoever, by the said [*lessor*] or any other person. IN WITNESS, &c.

Covenant by lessee to execute a counterpart of lease,

and pay the expenses of lease, counterpart, and this agreement.

Lease to contain a covenant by lessor.

And for peaceable enjoyment.

(*i*) *Vide ante*, 58, (*e*).

(*k*) If it be the agreement, say,

" to allow the said [*lessee*], his executors and administrators, from and off the said premises, competent and sufficient rough timber for repairing and amending the chancel of the said parish church, and all the erections and buildings on the said premises; *and also*"

(*l*) " lands and premises,"

GLEBE, &c.

To allow rough timber.

PURCHASE OF FEE SIMPLE.

AGREEMENT *for the* SALE *of a Freehold Estate; a short Form.*

Parties.

ARTICLES OF AGREEMENT made and entered into this day of 18 ; BETWEEN [*vendor*], of, &c. for himself, his heirs, executors, and administrators, of the one part, and [*purchaser*], of, &c. for himself, his heirs, executors and administrators, of the other part.

Vendor agrees to sell.

FIRST, the said [*vendor*] doth hereby agree with the said [*purchaser*], to sell to him ALL THAT messuage, &c. situate at, &c. with their appurtenances, for the sum of pounds: *and* that he the said [*vendor*] will,

To deliver abstract.

within (*one month*) from the date hereof, at his own expense, make and deliver to the said [*purchaser*], or his solicitor, an abstract of the title of the said [*vendor*] to the said [*parcels*] ; *and* will also, at his own expense, deduce a clear

To deduce title.

And that necessary parties shall execute conveyance.

title thereto ; *and also* that the said [*vendor*], or his heirs, and all other necessary parties, shall and will, on or before the day of next, on receiving from the said [*purchaser*], his executors or administrators, the said sum of pounds, at the costs and charges of him the said [*purchaser*], his heirs, executors, administrators, or assigns, execute a proper conveyance, for conveying and assuring the fee simple and inheritance of the said messuage and premises, with their appurtenances, unto the said [*purchaser*], his heirs, appointees, or assigns, free from all incumbrances ; with the usual and other proper covenants according to the circumstances of the title, for the title, for quiet enjoyment, and for further assurance (*a*) : AND

Purchaser agrees to pay consideration money.

THE SAID [*purchaser*] hereby agrees with the said [*vendor*], that he the said [*purchaser*], his heirs, executors, administrators, or assigns, shall and will, on the execution of

(*a*) See this clause more fully stated in the next precedent.

such conveyance as aforesaid, pay the sum of pounds unto the said [*vendor*], his executors or administrators : AND IT IS HEREBY FURTHER AGREED by and between the said [*vendor*] and [*purchaser*] (*b*) that the conveyance to the said [*purchaser*], his heirs, appointees, or assigns, shall be prepared by and at the expense of the said [*purchaser*], and that the same shall be settled and approved of on the parts of the said [*vendor*] and [*purchaser*], by their respective counsel or solicitors : *and* that each of them, the said [*vendor*] and [*purchaser*], shall pay the fees of his own counsel, and the charges of his own solicitor : *and* that all rates, taxes, and outgoings, payable for or in respect of the premises, to the day of , shall be paid and discharged by the said [*vendor*], his executors or administrators ; *and lastly*, (that (*c*), if the said [*vendor*] should not deliver an

PURCHASE OF FEE SIMPLE.

Conveyance to be at purchaser's expense ;

and be approved by the counsel or solicitor of each party, at his own expense.

Vendor to pay rates, &c. to a given day.

If abstract should not be delivered, and title deduced,

(*b*) " that the expense of any fine, recovery, covenant for production of title deeds, release, assignment, or surrender of any incumbrances, and of outstanding terms not already assigned to attend the inheritance, and which respectively shall be requisite or necessary to perfect the title to the said messuage and premises, shall be levied, suffered, made, and prepared respectively, by and at the expense of the said [*vendor*] ; *and also*,"

Fines, &c. to be at vendor's expense.

(*c*) A provision may also be inserted in agreements, making time the essence of the contract, in case the purchase money be not paid at the day appointed ; but of course clauses making agreements void if a title be not made, or the purchase money paid by a stated time, should never be inserted unless it be the *express intention* of the parties. Sug. Vend. Append. 8. 5th ed. [App. 6. 7th ed.]

Time the essence of the contract*.

Where time is not deemed material, clauses to the following effect should be inserted, instead of the above in parentheses :

When time is not the essence of the contract.

" that the said [*purchaser*] and his heirs shall have, receive, and take the rents and profits of the said messuage and

Purchaser to receive the rents from a given time.

[* It was at one time doubted, whether time could be made the essence of the contract ; but it has lately been decided in the case of *Hudson* v. *Bartram*, 3 Madd. 440, that it may. See also *Boehm* v. *Wood*, 1 J. & W. 419. *Harrison* v. *Gardner*, 2 Madd. 219. Time may become the essence of the contract, although the contract does not contain one word about it. *Withy* v. *Cottle*, 1 Turn. 78. *Ed.*]

PURCHASE OF FEE SIMPLE.

within a given time, agreement to be void.

abstract of his title to the said [*purchaser*] or his solicitor, before the expiration of (*one calendar month*) from the date hereof, or should not deduce a good and marketable title to the said messuage and premises, before the said day of , then and in either of the said cases, immediately after the expiration of the said (*one calendar month*), or the said day of , as the case may be, this present agreement shall (at the option of the said [*purchaser*], his heirs or assigns,) be utterly void to all intents and purposes whatsoever, and the jurisdiction of equity wholly barred; it being the true intent and meaning of the parties hereto, that in the event aforesaid, execution of this agreement shall not be enforced (against the said [*purchaser*]) by any court of equity, notwithstanding any rule, if such rule there be, that time cannot be made the essence of a contract, or any other rule or maxim whatsoever). IN WITNESS whereof the said parties have hereto set their hands the day and year first above written.

Declaration that time shall be the essence of the agreement.

WITNESS to the signing
by the above named

If consideration money not paid on the day fixed, purchaser to pay interest.

premises, from the day of next, for his and their proper use; *and* that if the said conveyance should not be executed by the necessary parties, and the said purchase money paid, on or before the said day of , then and in such case the said [*purchaser*], his heirs, executors, or administrators, shall from the same day of pay interest for the said purchase money, unto the said [*vendor*], his executors or administrators, after the rate of pounds *per centum per annum*."

AGREEMENT *for the* PURCHASE *of a* FREEHOLD *Estate.* PURCHASE OF FEE SIMPLE.

ARTICLES OF AGREEMENT indented, made, and entered into the day of 18 , BETWEEN [*vendor*], of, &c. of the one part, and [*purchaser*], of, &c. of the other part. Parties.

FIRST, the said [*vendor*], in consideration of the sum of pounds, to be paid to him, by the said [*purchaser*], pursuant to the covenant and agreement hereinafter in that behalf contained, doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*purchaser*], his heirs and assigns, by these presents; *that* he the said [*vendor*], shall and will within months from the date hereof, at his own expense, cause and procure to be made and delivered unto the said [*purchaser*], his solicitor, or agent, a full, complete, and perfect abstract, in the usual manner, of the title of him the said [*vendor*] unto the fee simple and inheritance of the messuages, &c. hereinafter mentioned; and if the counsel of the said [*purchaser*] should be of opinion (*a*) that the said [*vendor*] has a good title thereto, then that he the said [*vendor*], his heirs or assigns, and all other necessary parties, shall and will, on or before the day of , now next ensuing, by good and sufficient conveyances (*b*) and assurances in the law, and with such covenants as are hereinafter mentioned, convey and assure, or cause to be conveyed Covenant from vendor to make a conveyance within a limited period.

(*a*) *i. e.* such a title as a court of law or equity would take to be a good title; for if the purchaser's counsel should disapprove of a good and clear title, yet the purchaser would be bound to accept it. *Argu. Lewis* v. *Lechmere,* 10 Mod. 505. [and on the other hand the approval by counsel of a bad title is not a waver of all reasonable objections. *Deverell* v. *Bolton,* 18 Ves. 505.] If the title be good, the purchaser is bound, although his counsel disapproves of it.

(*b*) If it should be necessary to levy a fine or suffer a recovery, it should be levied or suffered, &c. at the vendor's expense: see form of the agreement for that purpose, *ante,* 79. Fines, &c. at vendor's expense.

PURCHASE OF FEE SIMPLE.

and assured unto, and to the use of the said [*purchaser*], his heirs and assigns, or to such person or persons, or to such use or uses, as he or they shall direct or appoint, at his and their own proper costs and charges, ALL THOSE, &c. (*describe the estate pretty minutely*) containing by estimation, &c. *together* with the rights, members, and appurtenances to the said messuages (*c*), &c. and to every or any of them belonging, or in anywise appertaining (*d*). IN CONSIDERATION whereof, the said [*purchaser*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*vendor*], his executors, administrators, and assigns, *that* he the said [*purchaser*], his heirs, executors, or administrators, shall and will, upon the day of , now next, and upon the making and executing such conveyances and assurances as aforesaid, pay or cause to be paid unto the said [*vendor*], his executors, administrators, or assigns, at in the county of , the said sum of pounds in full, for the absolute purchase of the said messuages and hereditaments, but without any interest in the mean time for the same purchase money: AND IT IS HEREBY AGREED, that in such conveyances and assurances, so to be made by the said [*purchaser*], his heirs or assigns as aforesaid, there shall be contained covenants on the part of the said [*vendor*], his heirs, executors, and administrators (*e*), *that*, notwithstanding any act done by him

Parcels.

Covenant from purchaser to pay purchase money, upon having conveyance executed.

Covenants to be contained in conveyance on the part of vendor.

For title against his own acts;

Free from land tax.

(*c*) If the land-tax has been redeemed, add,

"freed and discharged from the land tax,"

Exception.

(*d*) If a pew in a church, annexed to the house, a close of land, a right of way, or any other thing, be intended to be reserved, the exception may be noticed here.

Covenants to be contained in conveyance should be mentioned.

(*e*) It is prudent to insert in the contract what covenants the vendor is to enter into, as it prevents much delay in finally settling the conveyance; but at the same time the form, *ante*, 78, may be sometimes preferred; because until the title has been investigated, it is impossible to know whether the covenants ought to be restrained or general. As to the usual covenants, on the sale of an estate in fee simple, *vide ante*, 33. n.

the said *vendor* (*f*), he the said [*vendor*] or his heirs, is or are, at the time of the execution of such conveyances, seised of or well entitled to, the inheritance in fee simple in possession, of and in the said premises so agreed to be conveyed by him as aforesaid; *and* that he or they hath or have good right to convey the same unto or to the use of the said [*purchaser*], his heirs, appointees, or assigns, for ever; *and* that the said [*purchaser*], his heirs, appointees, and assigns, shall and lawfully may peaceably and quietly enjoy the same, without any interruption of, from, or by the said [*vendor*], or his heirs, or any other person or persons whomsoever, (claiming (*g*) under him or them (*h*)); *and* free from all incumbrances made, done, or committed by the said [*vendor*], or by any other person or persons whomsoever (claiming (*g*) under him or them (*h*) (*i*));

PURCHASE OF FEE SIMPLE.

Good right to convey.

(*f*) If the state of the title require that the covenants should be general, add,

General covenants for title.

"or by any other person or persons whomsoever,"

If the covenant be restrained to the acts of ancestor, &c. say,

Against acts of ancestor, &c.

"or by [*ancestor, &c.*] late of, &c. deceased,"

(*g*) If the covenants are to be general, omit the part in parentheses.

General covenants.

(*h*) If the covenants are restrained to the acts of the vendor, and his ancestor, &c. add,

Against acts of vendor and his ancestor, &c. only.

"or under (the said [*ancestor, devisor, &c.*] deceased; (*or* any of his ancestors;")

(*i*) If the estate be subject to a fee farm rent, mortgage, annuity, rent, charge, or other incumbrances, they may be mentioned here, thus,

Incumbrances excepted, and to be discharged by purchaser:

"a fee farm rent payable to the lord of the manor of out of the said premises only excepted;"

Fee farm rent.

"a mortgage of the said premises, (in fee by indentures of lease and release, bearing date the and days of 18, (*or*, by demise for years, by indenture bearing date the day of , 18 ,) and made between the said [*vendor* or *mortgagor*] of the one part, and [*mortgagee*] of, &c. of the other part, for securing the payment of the sum of pounds and interest, only excepted; *and* which said sum of pounds, and the

Mortgage, in fee,

or for years.

PURCHASE OF FEE SIMPLE.

For further assurance.

and that he the said [*vendor*], and his heirs, and all and every other person or persons, lawfully or equitably claiming, or to claim, any estate, right, title, or interest, whether legal or equitable, of, in, to, or out of, the said premises hereby agreed to be conveyed, ((*k*) under or in trust for him or them (*l*)), shall and will, at the request, and expense of the said [*purchaser*], his heirs or assigns, make, do, and execute any act, for better conveying and assuring the said premises, so agreed to be sold and conveyed as aforesaid, unto or to the use of the said [*purchaser*], his heirs, appointees, or assigns, for ever;

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interest thereon from the day of now next, it is hereby agreed shall be paid and discharged by the said [*purchaser*], his heirs, executors, or administrators, who shall indemnify the said [*vendor*], his heirs, executors, and administrators, therefrom;"

Annuity.

"an annuity, (*or* rent charge), of pounds, payable to for h life, out of the said premises, and secured by indenture bearing date, &c. and made, &c. and the term, estate, and interest thereby created, only excepted; *and* which said annuity, (*or* rent charge,) from, &c." *as above.*

Leases.

"other than, and except such leases for *(twenty-one)* or any lesser number of years, as the said [*vendor*], hath already granted, of the said premises, or any part thereof, at full improved rents reserved, to be payable yearly or oftener, during the continuance of the estates granted by the same leases respectively; (*or* the leases, and agreements in writing for leases, of the present tenants or occupiers of the said premises); *and* the terms, if any, outstanding, in trust for the said [*vendor*], his heirs, appointees, and assigns."

Agreements for leases.

Outstanding terms.

General covenants.

(*k*) If the covenants are to be general, omit the part in parentheses.

Acts against the vendor and his ancestor, &c. only.

(*l*) If the covenants are restrained to the acts of the vendor and his ancestor, &c. add,

"or under or in trust for (the said [*ancestor, devisor, &c.*] (*or* any of his ancestors;)"

PURCHASE OF FEE SIMPLE.

so as such further assurances contain no further covenents, than against the person or persons who shall be requested to make the same, or against his, her, or their heirs; and so as the party or parties who shall be requested to make such further assurances be not compellable to travel from the usual place of his, her, or their abode, for the doing thereof (*m*). AND IT IS HEREBY AGREED, by

Agreement respecting arrears of rent.

(*m*) If the premises are part of a larger estate, or part of a family estate, and it is probable that the title deeds also relate to property of greater value, it may be prudent to insert the following provision; although in the absence of an express stipulation to the contrary, the vendor would be liable to the expense of attested copies, not of all the deeds, but only so far back as to make a title; *Dare* v. *Tucker*, 6 Ves. 460. and as a necessary consequence, it seems, the expense of the deed of covenant to produce them. *Berry* v. *Young*, 2 Esp. N. P. C. 640. n. [but the purchaser is not entitled to attested copies of instruments of record, *Campbell* v. *Campbell*, Sugd. Vend. 463. 7th ed.]

Purchaser entitled to attested copies, and covenant to produce them, when there is no contrary provision.

"AND IT IS HEREBY AGREED, by and between the said parties, that such of the title deeds or writings concerning the said premises, as shall be found to relate to other property of the said [*vendor*], of equal or greater value, shall be retained by him on his delivering, at his own expense, true and attested copies of them duly stamped; and on his entering into the usual covenant, to be prepared by and at his own expense, for producing the originals; but such covenant nevertheless to be void, if the said [*vendor*] should afterwards sell any part of the property retained by him, and deliver the same deeds and writings to the purchaser thereof, and procure such purchaser to enter into the same or the like covenants."

Vendor to retain title deeds, and at his own expense deliver purchaser attested copies, and covenant to produce them.

If the premises sold are the largest part of the estate to which the title deeds relate, say,

"AND IT IS HEREBY AGREED, by and between the said parties, that such of the title deeds or writings concerning the said premises as shall be found to relate to other property of the said [*vendor*], of inferior value, shall be delivered to the said [*purchaser*], and the said [*vendor*] shall be entitled to have, at his own expense, such copies of them, either examined copies unstamped, or attested copies, duly stamped, as he shall think fit; and also the usual

Purchaser to have title deeds, but vendor to have copies, and a covenant to produce them at his own expense.

PURCHASE OF FEE SIMPLE.

and between the said parties, that all arrears of rent and other profits arising from the said estate and premises, or any part thereof, which now are, or which on or before the said day of now next, shall incur, accrue, or become due, shall belong to, and be received by, the said [*vendor*], his heirs, executors, or administrators; *and* that he and they shall have full power and free liberty to get in and receive the same accordingly (*n*). (AND IT IS

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covenant by the said [*purchaser*], for producing the originals, to be prepared by and at the expense of the said [*vendor*]; but such covenant nevertheless to be void, if the said [*purchaser*] should, &c." *as above.*

See further, as to *attested copies*, note *infra*, under COVENANTS TO PRODUCE TITLE DEEDS, and Sug. Ven. 388, 5th ed. [462, 7th ed.]

If the premises be subject to a mortgage, or any other incumbrance, in order to save the purchaser the expense of a long conveyance, it is the usual practice to add a similar provision to the following:

Purchaser to be at the expense of deeds discharging incumbrances.

"AND IT IS HEREBY FURTHER AGREED by and between the said parties, that if the said premises should be subject to any incumbrance, it shall either be paid off or otherwise satisfied by the said [*vendor*], and the said premises at his own expense be effectually released and discharged therefrom, previously to the conveyance to the said [*purchaser*]; or such release or discharge shall be made by separate and distinct deed or deeds, to be prepared by and at the expense of the said [*vendor*], and to be approved by the counsel or solicitor of the said [*purchaser*], at his own expense, but the execution thereof to be attested by the solicitor or agent of the said [*purchaser*], at the expense of the said [*vendor*]."

Some of the consequences of the contract.

(*n*) Equity looks upon things agreed to be done as actually performed; consequently, when a contract is made for sale of an estate, equity considers the vendor as a trustee of the estate sold, for the purchaser and his heirs, and the purchaser as a trustee of the purchase money for the vendor and his executors; the vendor entitled to interest for his money, and the purchaser entitled to the rents of the estate from the time stipulated for completing the contract; but as the rate of interest in equity does not appear to be fully settled, it should be provided for, *ut ante*, 80; yet in the case of timber to be taken at a valuation, interest on the purchase money for the timber will only com-

PURCHASE OF FEE SIMPLE.

Purchaser to pay the expenses of an inclosure act.

HEREBY AGREED AND DECLARED between and by the said parties to these presents, that so much of the expenses attending the soliciting, obtaining, and passing, an act of parliament, made and passed in the year of his present Majesty's reign, intituled, "*An act for dividing, allotting, and enclosing a certain large open tract of land within the said manor of in the county of* ;" the surveying, planning, dividing, and allotting the said tract of land, and the preparing, making, and inrolling the general award of the commissioners in and by the same act named and appointed in pursuance of the said act, and the instruments of election in the said act mentioned, and of all other the charges and expenses attending the execution of the said act, as shall be, or become payable, for or on account of any allotment of the said tract of land, for or in respect of the said premises hereby agreed to be sold and conveyed by the said [*vendor*], as aforesaid, shall be borne and paid by the said [*purchaser*], his heirs and assigns.) IN WITNESS, &c.

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mence from the valuation. The vendee being in contemplation of equity, actually seised of the estate, he must bear any loss which may happen to the estate between the agreement and conveyance, and will be entitled to any benefit which may accrue to it in the interim; therefore a purchaser of property liable to be destroyed by fire, should immediately after the contract, ascertain that it is properly insured. The purchaser may devise the estate before the conveyance, and the devisee will be entitled to have the estate paid for out of the personal estate of the purchaser; but if the purchaser should wish the estate to pass under a general devise, in a will already made, the will should be republished; and a subsequent conveyance to the purchaser, or to a trustee for him, will not operate as a revocation, although the legal estate will descend to the heir at law: yet he will in equity be deemed a trustee for the devisee: but it seems that a devise of a freehold estate contracted for is revoked by a subsequent conveyance to the usual uses to prevent dower. If, however, it were stipulated in the contract, *ut ante*, 81, that the estate should be conveyed "to the purchaser in fee, or to such uses as he should appoint," a conveyance to uses, to prevent dower, would not, it has been supposed, operate as a revocation. Sug. Vend. 154, 162, 424, 429. 5th ed. to which excellent work the reader is referred for information respecting "The law of vendors and purchasers of estates."

SALE OF A MANOR, &c. BY TRUSTEES TO TWO PURCHASERS.

AGREEMENT *for the Sale of a* MANOR, ADVOWSON, TITHES, MESSUAGES, *&c. by three* TRUSTEES *under a Will, one of whom is one of the* Cestui que Trusts, *and in which the other* Cestui que Trusts *join, to two Persons; the Timber to be taken at a Valuation, if not exceeding a certain Sum; Stock transferred to a third Person by way of Deposit; and Agreement by the Purchasers to allow the Tenants a Compensation for Crops, &c.*

Timber at valuation.

Stock transferred as deposit.

Purchasers to allow compensation for crops.

ARTICLES of AGREEMENT made, concluded, and agreed upon, this day of in the year 18 , BETWEEN [*three trustees*] of, &c. which said [*trustees*] are devisees and trustees, named in the last will and testament of [*testator*], late of, &c. deceased; the said [*one of the trustees, and also one of the cestui que trusts*] in his own right [*husband of one of the cestui que trusts*], of, &c. and [ ] his wife, and [*the other cestui que trust*], of, &c. of the one part; and [*purchasers*], both of, &c. of the other part.

Parties.

Recital of contract for sale.

WHEREAS the said [*trustees*], as devisees and trustees as aforesaid, and the [*trustee and cestuique trust*] in his own right, [*husband of cestuique trust*], on behalf of himself and the said his wife, and the said [*other cestui que trust*], have contracted with the said [*purchasers*] for the absolute sale to them of the manor or lordship of , in the said county of , with the rights, members, and appurtenances thereunto belonging or appertaining; and of the advowson of the vicarage of aforesaid; and of the several messuages, farms, lands, tenements, tithes, and hereditaments, hereinafter mentioned, with their appurtenances, and the inheritance thereof in fee simple in possession, free from

SALE OF A MANOR, &c. BY TRUSTEES TO TWO PURCHASERS.

incumbrances (except as hereinafter mentioned), at or for the price or sum of pounds, exclusive of the timber thereon, which is to be taken at a valuation, as hereinafter mentioned: NOW THESE PRESENTS WITNESS, that for and in consideration of the sum of pounds of lawful money of Great Britain [and Ireland]; *and also* of such further sum of like lawful money, not exceeding the sum of pounds, as the timber standing and growing upon the said hereditaments shall be valued or estimated at, in manner hereinafter mentioned, to be paid to the said [*trustees*], [*husband*] and his wife, and [*other cestui que trust*], or such person or persons as they shall respectively direct or appoint, under or in pursuance of the agreement hereinafter for that purpose contained, on the part and behalf of the said [*purchasers*]; *they* the said [*trustees*], in their capacities of devisees and trustees as aforesaid; and also the said [*trustee and cestui que trust*], in his own right, and the said [*husband*], on the behalf of himself and the said his wife, and the said [*other cestui que trust*], in her own right, do hereby respectively covenant, promise, and agree, to and with the said [*purchasers*], their heirs and assigns, and to and with each of them, *that* the said [*trustees*], [*trustee and cestui que trust*], [*husband*], and his wife, and [*other cestui que trust*], their heirs, executors, or administrators, shall and will, on or before the day of now next ensuing the date hereof, to the satisfaction and good liking, and with the approbation of the said [*purchasers*], their heirs or assigns, or their counsel, make out and establish a good and clear title to the freehold and inheritance in fee simple, of and in, and by good and sufficient conveyances and assurances in the law, to be executed by all necessary and proper parties, well and sufficiently convey and assure, ALL THAT the manor or lordship of with its rights, members, and appurtenances, situate in, and being in the county of ; *and also* ALL THAT the advowson, right of patronage and presentation of and to the vicarage of aforesaid; *and also* ALL and singular the messuages, farms, lands, tenements, and hereditaments, mentioned and described in the schedule or particular hereunder

Testatum.

Parcels.

SALE OF A MANOR, &C. BY TRUSTEES TO TWO PURCHASERS.

written; *and also* all other the messuages, farms, lands, tenements, tithes, and hereditaments whatsoever, of them the said [*trustees*] and [*cestui que trusts*], or any of them, or of or to which they or any of them are or is seised or entitled at law, or in equity, situate, lying and being at aforesaid, with their and every of their appurtenances; and the inheritance thereof, in fee simple, unto and to the use of the said [*purchasers*], their heirs and assigns, or otherwise as they shall direct or appoint, freed and discharged of and from all charges and incumbrances whatsoever, *except* such as are mentioned in the schedule or particular hereunder written: AND IT IS HEREBY AGREED AND DECLARED, between and by the said several parties hereto, that all the timber and timber-like trees, standing, growing, and being upon the said manors, farms, lands, hereditaments, and premises, so contracted to be purchased as aforesaid, shall be valued and appraised by two indifferent persons; one of them to be nominated and appointed by and on the behalf of the said [*trustees*] and [*cestui que trusts*]; and the other of such two indifferent persons, to be nominated and appointed by and on the behalf of the said [*purchasers*]: AND in case such two persons so to be nominated and appointed as aforesaid, should not agree in the estimate or value of such timber and timber-like trees, then the same shall be valued and appraised by such one indifferent person as the first two nominees shall for that purpose appoint umpire in the premises. AND the estimate or valuation of such two persons, or of their umpire, to be respectively nominated and appointed as aforesaid, shall be final and conclusive upon the said parties hereto: AND in consideration of the agreement hereinbefore contained, on the respective parts of the said [*trustees*] and [*cestui que trusts*], they the said [*purchasers*] do, and each of them doth, hereby covenant, promise, and agree, to and with the said [*trustees*] and [*cestui que trusts*] respectively, and their respective heirs and assigns, *that* they the said [*purchasers*], their heirs, executors, or administrators, or some or one of them, shall and will, on or before the day of now next ensuing, upon the title to the said manor, advowson, messuages, farms, lands, tenements, tithes, and hereditaments, being approved of by the coun-

Timber to be valued by arbitrators.

And if they disagree, by umpire.

Covenant by vendees to pay the purchase money.

sel of the said [*purchasers*], their heirs or assigns, and upon the execution of such conveyances and assurances, as are hereinbefore agreed to be made and executed of the same premises, pay, or cause to be paid, unto the said [*trustees*] and [*cestui que trusts*], or such other person or persons, as upon the investigation of the title shall appear to be entitled to receive the same, the full sum of [*purchase-money*] pounds, of like lawful money as sforesaid: *and also* such further sum or sums of money, not exceeding the sum of pounds, as the value of the timber, and timber-like trees, shall, according to such appraisement thereof as aforesaid, amount unto: *and also* that they the said [*purchasers*], their heirs, executors, or administrators, shall and will bear, pay, and sustain the whole of the costs, charges, and expenses, to be occasioned by, or otherwise attending, the valuation and appraisement, so to be made of the said timber, and timber-like trees, as aforesaid: PROVIDED ALWAYS, *and it is hereby agreed and declared*, that in case the value of the timber, and timber-like trees, shall according to such appraisement thereof exceed the sum of pounds, *then* the said [*purchasers*] shall have the benefit of such excess, and the sum of pounds shall be considered as the full price of the whole of such timber, and timber-like trees: BUT *nevertheless it is agreed*, that in case the value of the said timber, and timber-like trees should, according to such appraisement, be less than the sum of pounds, *then* only so much money shall be paid by the said [*purchasers*], their heirs, executors, or administrators, for the price or consideration for such timber, and timber-like trees, as the same shall be so actually valued and appraised at, as aforesaid: AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties hereto, that the costs and expenses of preparing and executing the deeds of conveyance of the said premises, shall be borne and paid by the said [*purchasers*], their executors or administrators: BUT the costs and charges of making out the title to the said premises, and of all and every fine or fines, recovery or recoveries, which shall be necessary for making good, or clearing up the title, shall be borne and paid by the said [*trustees*] and [*cestui que trusts*] or some or one of them: AND IT

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The valuation of timber not exceeding a certain sum;

and the expenses attending the valuation.

Purchasers not to pay more for the timber than a stipulated sum.

Expenses of conveyances, &c. to be paid by purchasers.

Making out the title by vendors.

Purchasers to have possession on a given day.

SALE OF A MANOR, &c. BY TRUSTEES TO TWO PURCHASERS.

IS HEREBY ALSO AGREED between the said parties hereto, that they the said [*purchasers*], their heirs or assigns, shall have and be entitled to the possession of the said manor, &c. with their appurtenances, upon the day of , 18 ; and to receive the rents, issues, and profits thereof, from that time; and that all outgoings, for or in respect of the premises, shall be duly paid and discharged by the said [*trustees*] and [*cestui que trusts*] up to the said day of 18 : AND they the said [*trustees*] and [*cestui que trusts*] do hereby severally undertake and agree with the said [*purchasers*], that good and sufficient notices have been duly served upon the said several tenants of the said manor, &c, so agreed to be purchased as aforesaid, to quit the possession and occupancy thereof at (*Lady-day,*) which will be in the year 18 ; and that in consequence of such notices, such respective tenants will be compellable, on that day, to quit and deliver up the premises by them respectively holden: AND WHEREAS part of the lands so agreed to be purchased as aforesaid, hath been sown with wheat, other part thereof with clover, and other grass seeds, and fallowing, and other acts of cultivation have been done on other parts thereof, by the respective tenants thereof, which they cannot take, or receive the benefit of, in consequence of such notices so given them to quit as aforesaid, NOW THE SAID [*purchasers*] do hereby respectively agree with the several other persons parties hereto, that in case the said [*purchasers*] shall require the tenants of the said several farms, lands, hereditaments and premises, or any of them, to quit or deliver up the possession of the premises by them respectively holden or occupied, pursuant to the said notices to them respectively given for that purpose as aforesaid, then and in that case they the said [*purchasers*], their heirs, executors, or administrators, shall and will pay unto each of the tenants or occupiers of the same farms, lands, hereditaments, and premises, who shall be so required to quit or surrender up the premises by them respectively holden or occupied, such sum or sums of money as shall be considered a fair and reasonaable satisfaction to him for the sowing, making, fallowing, and doing other acts of cultivation as aforesaid; the amount

Undertaking by vendors, that proper notices have been served on the tenants to quit.

Recital that part of the lands has been sown with seeds, &c.

Agreement by vendors to pay for same according to valuation.

SALE OF A MANOR, &c. BY TRUSTEES TO TWO PURCHASERS.

of such sum or sums of money to be ascertained by two indifferent persons, the one of them to be named and appointed by the tenant of such lands and premises, and the other by the said [*purchasers*], their heirs or assigns; and in case such two persons cannot agree to determine the amount of such sum or sums of money, then the amount thereof shall be ascertained by such one person as the two first nominees shall appoint umpire for that purpose, whose determination shall be final: AND WHEREAS the said [*purchasers*] have, previously to the execution of these presents, with the consent and approbation of the said [*trustees*] and [*cestui que trusts*], transferred the sum of 3 per cent. consolidated bank annuities, into the name of [*trustee*] of, &c. as by reference to the books of the governor and company of the Bank of England will appear: Now *it is hereby agreed and declared* between and by the said parties hereto, that the said sum of 3 per cent. consolidated bank annuities, are and were so transferred into the name of the said [*trustee*], at the request and with the consent of the said [*trustees*] and [*cestui que trust*], as a deposit, and to the intent that the same may be applied in part payment of the aforesaid purchase money or sum of pounds; and for that purpose it is hereby further agreed and declared, that upon the title to the said manor, messuages, &c. being approved by the counsel of the said [*purchasers*], their heirs or assigns, and upon the execution of the conveyance or assurance hereinbefore agreed to be made and executed of the same premises, he the said [*trustee*] shall sell and dispose of the said sum of 3 per cent. consolidated bank annuities, and shall pay the money arising by such sale, (after deducting the usual commission for brokerage), unto the said [*trustees*] and [*cestui que trusts*], or such of them, or such other person or persons, as shall appear to be entitled to receive the aforesaid purchase money, in or towards payment and satisfaction of so much of the aforesaid purchase money or sum of pounds: PROVIDED ALWAYS, that in the mean time, and until the sale of the said sum of 3 per cent. consolidated bank annuities, as aforesaid, the dividends and interests thereof shall be paid to and received by the said [*purchasers*]: PROVIDED ALWAYS, that in case the said contract so enter-

Recital of transfer of stock.

Declaration that same was in trust as a deposit in part of purchase ney.

But purchasers to be entitled to intermediate interest on deposit.

If contract cannot be carried

SALE OF A MANOR, &c. BY TRUSTEES TO TWO PURCHASERS.

ed into for the sale of the said manor, &c. and premises as aforesaid, should be relinquished or abandoned by the said several parties hereto; or in case the same cannot be carried into execution by reason of any defect of title, or otherwise, *then* the said [*trustee*] shall stand possessed of and interested in the said sum of 3 per cent. consolidated bank annuities, IN *trust* for the said [*purchasers*], their administrators and assigns. IN WITNESS, &c.

into effect, deposit to be held in trust for purchasers.

FOR SALE OF AN INFANT'S ESTATE.

AGREEMENT *for the Sale of an* INFANT'S ESTATE; *and* COVENANT *that the Infant, or his Heirs, when competent, shall convey; and that a* MORTGAGEE *for Years shall assign his Security to the Purchaser: and, in case of the Infant's Default, a Sum to be paid by way of Liquidated Damages* (*a*).

ARTICLES OF AGREEMENT made and entered into the day of 18 , BETWEEN [*vendor*], of, &c. and [*other vendor*], of, &c. widow and relict of [*ancestor*], late of, &c. deceased, of the one part, and [*purchaser*], of, &c. of the other part.

Parties.

Recital of ancestor's intestacy, and infancy of his heir at law.

WHEREAS the said [*ancestor*], deceased, departed this life in or about the month of , 18 intestate, leaving an infant now of the age of years or thereabouts, his eldest son, and one daughter, and two

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(*a*) In cases of this kind it is often advisable to have a private act of parliament, which fully effectuates the intention of the parties immediately, without any conveyance from the heir; but a full equivalent must be settled on the infant, and it must clearly appear that he will be benefited by the act. 2 Bla. Com. 345. 5 Cru. Dig. 8. 2d ed. and see the dissertation, *infra*, on PRIVATE ACTS OF PARLIAMENT. "III.—*The purposes for which private acts of parliament are usually obtained.*" And see the form of such an act, *infra*, INDEX, tit. "ACT OF PARLIAMENT."

younger sons. And whereas the said [*ancestor*], deceased, was at the time of his death seised in fee simple of the messuage, lands, and hereditaments hereinafter more particularly described, *subject* to a mortgage thereof, made for a term of thousand years, to [*mortgagee*], for securing to her thousand hundred pounds, and interest; which mortgage has since been assigned to the said [*assignee of mortgagee*], for securing to him the like sum and interest. And upon the death of the said [*ancestor*], the father, the said messuage, lands, and hereditaments descended to and became vested in the said [*the infant*], as the heir at law of the said [*ancestor*] deceased, *subject* to the said term of thousand years, and the principal and interest monies thereby secured. And whereas the said [*vendors*] being of opinion that it would be beneficial to the said [*the infant*,] if the said messuages, lands, and hereditaments, were absolutely sold, they have entered into such agreement for the sale thereof, to the said [*purchaser*], as is hereinafter mentioned: Now these presents witness, that the said [*vendors*], in consideration of the sum of thousand pounds, to be paid by the said [*purchaser*] in the manner hereinafter mentioned, do, and each of them doth hereby, jointly and severally, and for their and each of their heirs, executors, and administrators, covenant and agree with the said [*purchaser*], his heirs, executors, administrators, and assigns, in manner following, that is to say: That the said [*the infant*], within six calendar months next after he shall attain the age of twenty-one years, or in case of his death in the mean time, the heir or heirs at law of the said [*the infant*], within calendar months next after he, she, or they shall be capable by law of making and executing a conveyance of freehold hereditaments, and all other necessary and proper parties, shall and will at the costs and charges of the said [*the infant*], or his heirs, make out a good title unto, and at the expense of the said [*purchaser*], his heirs, executors, administrators, or assigns, well and effectually convey and assure, unto and to the use of the said [*purchaser*], his heirs, and assigns, or otherwise as he or they shall direct: All that messuage, dwelling-house, or tenement,

FOR SALE OF AN INFANT'S ESTATE.

Ancestor's seisin in fee subject to mortgage for years.

That a sale would be beneficial to infant.

Testatum.

Covenant by vendors,

that the infant or his heirs shall make a title at his or their own costs;

and convey at the costs of purchaser.

Parcels.

FOR SALE OF AN INFANT'S ESTATE.

called with the out-buildings, &c. together with all the rights, members, and appurtenances to the premises aforesaid belonging, free from all incumbrances whatsoever, (except as appears in and by these presents, in respect to the said term of thousand years, and the principal and interest monies thereby secured): *and further*, that he the said [*assignee of mortgagee*], his executors or administrators, and every other person claiming or to claim through or under him, shall and will upon the day of this present month of at the expense of the said [*widow of ancestor*], (the administratrix of the said [*ancestor*] deceased), make and execute unto the said [*purchaser*], his executors, administrators, or assigns, an assignment of the said messuage, lands, and premises, for the residue which will be then unexpired, of the said term of thousand years, subject to such equity of redemption as shall then affect the premises; *and* shall and will by the same deed, assign and assure to the said [*purchaser*], his executors, administrators, or assigns, the said mortgage debt or sum of thousand hundred pounds, and all interest thenceforth to grow due for the same: *and also* that he, the said [*purchaser*], his heirs and assigns, shall and may at all times henceforth, until the said messuage, lands, and hereditaments shall be conveyed to him or them as aforesaid, or until such refusal or neglect of or by the said , [*the infant*], or his heirs, to make and execute a conveyance of the said messuage, lands, and hereditaments, as hereinafter mentioned, peaceably and quietly have, hold, and enjoy the same messuage, lands, and hereditaments, and every part thereof, with their appurtenances, and receive and take the rents and profits thereof to his and their own use, without any let, suit, trouble, or interruption of, from, or by the said , [*the infant*], his heirs or assigns, or any other person or persons claiming or to claim by, from, under, or in trust for him or them, or under or in trust for the said [*ancestor*], deceased. AND THE SAID [*purchaser*], in consideration of the covenants and agreements in these presents contained, on the part of the said [*vendors*], doth hereby for himself, his heirs, executors, and administrators, covenant, pro-

That assignee of mortgagee shall assign term and mortgage money at the expense of ancestor's administratrix, one of the vendors.

That the purchaser may quietly enjoy.

Covenant by purchaser to pay mortgage money on execution of assignment;

FOR SALE OF AN INFANT'S ESTATE.

mise, and agree to and with the said [*vendors*], jointly, and each of them separately, their, and each of their heirs, executors, and administrators, in manner following, that is to say; that he the said [*purchaser*], his heirs, executors, or administrators, shall and will upon the said day of this present month of , and upon the execution by the said [*assignee of mortgagee*] of such assignment as aforesaid, of his said security, well and truly pay, or cause to be paid, unto the said [*assignee of mortgagee*], his executors, administrators, or assigns, the sum of thousand hundred pounds of lawful money [of Great Britain and Ireland] in full, for the principal money secured to him as aforesaid, on mortgage of the said messuage, lands, and hereditaments: AND shall and will, upon the said day of the same month of , well and truly pay, or cause to be paid, to the said [*vendors*], or one of them, for the use and benefit of the said [*the infant*], the further sum of hundred pounds of like lawful money; *and also* shall and will, upon the perfecting, completing, and executing of such good title to, and conveyance of the said messuage, lands, and hereditaments, unto the said [*purchaser*], his heirs or assigns, as aforesaid, well and truly pay, or cause to be paid, unto the said [*the infant*], his heirs or assigns, the further sum of thousand pounds of like lawful money; which said sums of thousand hundred pounds, hundred pounds, and thousand pounds, making together thousand pounds, are to be considered to be in full for the absolute purchase of the said messuage, lands, and hereditaments, discharged of the aforesaid mortgage. AND FURTHER, that he the said [*purchaser*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said [*vendors*,] or one of them, their or one of their executors, administrators, or assigns, for the use and benefit of the said [*the infant*], or his heirs, interest for the said sum of thousand pounds, after the rate of five pounds per centum, per annum, to be computed from the said day of this present month of , until payment of the said principal sum, half yearly, as such interest shall become due; the first half-yearly payment of interest to be made

and a further sum to vendors at the same time;

and the remainder of the purchase money on execution of conveyance by infant or his heirs.

Purchaser to pay interest on the part remaining unpaid.

FOR SALE OF AN INFANT'S ESTATE.

on the day of next ensuing: *and* that he the said [*purchaser*], his executors, administrators, or assigns, shall not nor will call in nor compel payment of the said principal sum of thousand hundred pounds, so to be advanced and paid by him to the said [*assignee of mortgagee*] as aforesaid, or any part thereof, or any interest for the same, or the said sum of hundred pounds, until default shall be made in the performance of all or any of the covenants and agreements of the said [*vendors*], hereinbefore contained: PROVIDED ALWAYS, *and it is hereby declared* to be the true intent and meaning of all and singular the said parties to these presents, that if the said [*the infant*], for the space of six calendar months next after he shall attain the age of twenty-one years, or in case of his death in the mean time, the heirs at law of the said [*the infant*], for the space of six calendar months next after he, she, or they shall be capable, by law, of making and executing a conveyance of freehold lands, shall refuse or neglect to make out a good title, and execute a proper conveyance of the said messuage, lands, and hereditaments, and the inheritance thereof, in fee simple unto the said [*purchaser*], his heirs or assigns, such conveyance being prepared and tendered for execution by and at the expense of the said [*purchaser*], his heirs or assigns; *then* the said [*purchaser*], his executors, administrators, or assigns, shall, at any time thereafter, be entitled to demand, sue for, recover, and receive of and from the said [*the infant*], his heirs or assigns, or the personal representative for the time being of the said [*ancestor*], deceased, the said sum of thousand hundred pounds, so to be paid by the said [*purchaser*], to the said [*assignee of mortgagee*], as aforesaid, with the interest thereof, to be computed from the said day of this present month of to the day on which the said principal money shall be actually paid, any thing hereinbefore contained to the contrary thereof notwithstanding: AND THE SAID [*vendors*], for themselves jointly and severally, and for their joint and several heirs, executors, and administrators, do, and each of them doth hereby further covenant, promise, and agree to and with the said [*purchaser*], his heirs, executors, administrators,

Not to compel payment of the mortgage money.

If the title be not perfected, and conveyances made, purchaser may compel payment of mortgage money.

And vendors in that event covenant to repay sum advanced to them;

FOR SALE OF AN INFANT'S ESTATE.

and assigns, that in case of such refusal or neglect on the part of the said [*the infant*], or his heir or heirs at law as aforesaid, they, the said [*vendors*], or one of them, their or one of their heirs, executors, or administrators, shall and will immediately on such refusal or neglect, well and truly repay, or cause to be repaid, unto the said [*purchaser*], his executors, administrators, or assigns, the said sum of hundred pounds so to be advanced and paid by the said [*purchaser*], together with interest for the same after the rate of five pounds per centum per annum, to be computed from the said day of to the day on which the repayment of the said sum of hundred pounds shall be actually made; *and also* shall and will at the same time well and truly pay, or cause to be paid, unto the said [*purchaser*], his executors, administrators, or assigns, the further sum of thousand pounds of like lawful money, by way of liquidated damages for the nonperformance of the covenant and engagement hereinbefore entered into by the said [*vendors*], for and on the part of the said [*the infant*] or his heir or heirs at law, and not by way of penalty. IN WITNESS, &c.

and a further sum by way of liquidated damages.

ON SALE OF INTAILED RENT CHARGE, THAT TENANT IN TAIL SHALL CONCUR.

AGREEMENT *on the Sale of a* RENT CHARGE *in Fee,* IN STRICT SETTLEMENT, *by Husband and Wife, Tenants for Life, who had previously sold Lands entailed without the concurrence of the Tenant in Tail, in consideration of the Rent Charge, and settled the Rent Charge to the same Uses and Trusts as the Lands were previously subject to; that one of their Sons, the first Tenant in Tail, who was absent, or in case of his Death, some other of their Children, when competent, should make a Conveyance of the Rent Charge, and confirm the Sale of the Lands: the Wife appoints her separate Life Interest; and the Husband mortgages a Leasehold Estate to the four Purchasers, for securing the Repayment of the Purchase Money, and the Liquidated Damages agreed on; with many other* VERY SPECIAL *Recitals and Clauses, as in the margin.*

ARTICLES OF AGREEMENT indented, made, and entered into the day of 18 ,

Parties. BETWEEN [*husband, who is the vendor*], of, &c. and , his wife, of the first part, and [*four purchasers*], of, &c. of the other part.

Recital of settlement of wife's estate. WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of 17 , the release being made between the said [*wife*], by her then name and addition of [*maiden name*], spinster, of the first part, the said [*husband*] of the second part, and [*trustee*], since deceased, and [*trustee*], esquires, therein described, of the third part, *In consideration* of a marriage then intended, and since solemnized, between the said [*husband*] and [*wife, maiden name*], the said [*wife, maiden name*], did bargain, sell, and convey unto the said

ON SALE OF INTAILED RENT CHARGE, THAT TENANT IN TAIL SHALL CONCUR.

[*trustees*] *All that* messuage, &c. *To hold* the same unto the said [*trustees*] and their heirs, *To the use* of the said [*wife, maiden name*] and her heirs, until the said intended marriage should take effect; *And* from and after the solemnization thereof, *To the use* of the said [*trustees*] and their heirs, during the life of the said [*wife, maiden name*], *Upon trust,* that the said [*trustees*], and the survivor of them, and the heirs and assigns of such survivor, should pay and apply the rents and profits of the said messuage, &c. as the same should from time to time become due and be received, during the life of the said [*wife, maiden name*], unto such person or persons only, and for such intents and purposes only, as the said [*wife, maiden name*] should by any writing or writings, to be signed with her hand, from time to time, notwithstanding her coverture, direct or appoint; *And* in default of such direction or appointment, and in the mean time, and from time to time, until the said [*wife, maiden name*] should make any such direction or appointment, should pay such rents and profits, or so much thereof concerning which she should or might from time to time happen to make no such direction or appointment, into the proper hands of the said [*wife, maiden name*], exclusive of the said [*husband*]; *And* from and immediately after the decease of the said [*wife, maiden name*], *To the use* of the said [*husband*] and his assigns, during the term of his life; *With* remainder, *To the use* of the said [*trustees*] and their heirs, during the life of the said [*husband*], *Upon trust,* to preserve the contingent uses and estates; *With* remainder *To the use* of such child or children of the said [*husband*], on the body of the said [*wife, maiden name*], to be begotten, entirely; or in such parts, shares, and proportions, in case there should be two or more such children, and for such estate and estates, and in such manner, and by, with, under, and subject to such powers, provisoes, conditions, and restrictions, and with such limitations over, to be for the benefit of some or one of the said children, as the said [*husband*] and [*wife, maiden name*], at any time or times, during their joint lives, by any deed or deeds, writing or writings, with or without power of revocation, sealed and delivered by them respectively, in the presence of, and attested by

To the use of wife till marriage;

Remainder to trustees during wife's life, upon trust to pay rents and profits as she should, notwithstanding coverture, appoint.

In default of appointment, to pay rents and profits, to her separate use.

Remainder, to husband for life;

Remainder, to trustees to preserve contingent remainders.

Remainder to such children of the marriage as husband and wife should jointly appoint.

ON SALE OF INTAILED RENT CHARGE, THAT TENANT IN TAIL SHALL CONCUR.

two or more credible witnesses, should jointly direct, limit, or appoint; *And* in default of such joint direction, limitation, or appointment, then, as the survivor of them, the said [*husband*] and [*wife, maiden name*], during his or her life, by any deed or deeds, writing or writings, with or without power of revocation, sealed and delivered by him or her, in the presence of, and attested by two or more credible witnesses, or by his or her last will and testament, in writing, signed by him or her, in the presence of, and attested by three or more credible witnesses, should direct, limit, or appoint; *And* in default of any such direction, limitation, or appointment, *To the use* of the first and other sons of the said [*husband*] on the body of the said [*wife, maiden name*] to be begotten, successively in tail male; *With* remainder, *To the use* of all and every the daughters of the said [*husband*] on the body of the said [*wife, maiden name*] to be begotten, as tenants in common, in tail, with cross remainders between them in tail, in case of the death and failure of issue of any of them; *With* remainder *To the use* of such person and persons, and for such estate and estates, and with such remainders over, and upon such trusts, and for such intents and purposes, and charged and chargeable in such sort, manner, and form, and subject to, and by, with, and under, such powers, conditions, provisoes, limitations, declarations, and directions, as the said [*wife, maiden name*] at any time or times, during her life, by her last will and testament, in writing, or any writing purporting to be her last will, to be by her signed and published, in the presence of, and attested by three or more credible witnesses, should direct, limit, or appoint, of or concerning the said hereditaments and premises, or of and concerning any part or parts thereof; *And* in default of such direction, limitation, or appointment, *To the use* of the said [*wife, maiden name*], her heirs and assigns for ever: *And* in the said indenture of release, now in recital, is contained the usual power of sale and exchange, and for laying out the purchase money in the purchase of other hereditaments, to be settled to the same uses, trusts, intents, and purposes. AND WHEREAS the said [*trustee*] afterwards departed this life, leaving the said [*trustee*], his co-trustee, him surviving. AND WHEREAS

In default of joint appointment, as the survivor should appoint.

In default of any appointment, to first and other sons in tail male.

Remainder to daughters, as tenants in common in tail, with cross remainders in tail.

Remainder, as wife should by will appoint.

In default of such appointment, to wife in fee: with usual powers of sale and exchange.

Recital of death of one of the trustees,

the said [*husband*] and his wife, by virtue of a power contained in the said indenture of release of the day of , 17 , did nominate and appoint the said [*new trustee*], to be a trustee in the place of the said [*deceased trustee*] deceased, with the said [*surviving trustee*], in the several trusts, in the indenture of release, of the day of , 17 , limited, expressed, or contained, of and concerning the several hereditaments and premises therein respectively comprised, or such of the said trusts as were then subsisting, undetermined or capable of taking effect. AND WHEREAS by indentures of lease and release, bearing date respectively the and days of 17 , the release being made between the said [*new and old trustee*] of the first part, the said [*husband*] and his wife of the second part, the said [*four purchasers*] of the third part, and [*trustee for the four purchasers*] therein described, of the fourth part; *In consideration* of the sum of [*purchase money*] to the said [*trustees*], paid by the said [*four purchasers*], at the request and by the direction of the said [*husband*], and his wife; *and* for the nominal consideration therein mentioned, The said [*trustees*] at the like request, and by the like direction of the said [*husband*] and his wife, and also at the nomination of the said [*four purchasers*], did bargain, sell, make sale and dispose of, alien and release; *And* the said [*husband*] and his wife, did grant, bargain, sell, alien and release, ratify and confirm unto the said [*trustee for purchasers*], and his heirs, *All that* the aforesaid messuage, &c. *To hold* the same *unto and to the use* of the said [*trustee for purchasers*], his heirs and assigns for ever; *Nevertheless*, as to one undivided fourth part or share, of and in the said messuage, &c. *In trust* for the said [*one of the purchasers*], his heirs and assigns; *And* as to one other undivided fourth part, *In trust* for the said [*another of the purchasers*], his heirs and assigns; *And* as to one other undivided fourth part, *In trust* for the said [*another of the purchasers*], his heirs and assigns; *And* as to the remaining one undivided fourth part, *In trust* for the said [*the other purchaser*], his heirs and assigns. AND WHEREAS by indentures of lease and release, respectively bearing date on or about the and

OF SALE OF INTAILED RENT CHARGE, THAT TENANT IN TAIL SHALL CONCUR.

and appointment of a new trustee.

Recital of a conveyance of the settled premises to a trustee for four purchasers, as tenants in common.

Recital of the grant of a rent charge in fee,

ON SALE OF INTAILED RENT CHARGE, THAT TENANT IN TAIL SHALL CONCUR.

by the four purchasers and their trustee, upon the same uses and trusts as the lands were settled to.

days of . . . 17 , and made between the said [*trustee for purchasers*] of the first part, the said [*four purchasers*] of the second part, the said [*husband*] and his wife, of the third part, [*trustee for securing annuity*] therein described, of the fourth part, and the said [*trustees*] of the fifth part, *Reciting* as or to the effect hereinbefore recited; *And reciting* that the said [*trustees*], at the request, and by the direction of the said [*husband*] and his wife, had contracted and agreed with the said [*four purchasers*], for the absolute purchase in fee simple, free from incumbrances, of the annual sum or yearly rent charge of [*annuity*] pounds, to be issuing out of, and chargeable upon the same messuage, &c. hereinbefore described, with the appurtenances, at or for the price or sum of [*purchase-money*] pounds, being the whole of the monies arising from and produced by the sale of the said messuage, &c. comprised in the said indentures of lease and release of the and days of 17 ; *It is witnessed*, that in consideration of [*purchase-money*] pounds, to the said [*four purchasers*] paid by the said [*trustees*], *The* said [*purchasers' trustee*], at the request, and by the direction of the said [*four purchasers*], and with the privity and approbation of the said [*husband*] and his wife, *did* grant, bargain, sell, and release, *And* the said [*four purchasers*] (according to their respective shares and interests) did grant, bargain, sell, release, ratify and confirm, unto the said [*annuity trustee*], and to his heirs, *The* said messuage, &c. hereinbefore described, with the appurtenances, *To hold* the same unto the said [*annuity trustee*], his heirs and assigns, *To the use*, intent, and purpose, that the several persons thereinafter mentioned, should and might, severally and respectively, in the manner and according to the uses, and upon the trusts thereinafter declared, and in such course and order of succession or remainder one after another, and in such shares and proportions, as are thereinafter expressed and provided, have, receive, take, and enjoy, yearly and every year, for and during the respective estates, interests, and limitations thereinafter expressed, and to such persons in that behalf respectively limited, *One* annual rent charge, or

To a trustee.

ON SALE OF INTAILED RENT CHARGE, THAT TENANT IN TAIL SHALL CONCUR.

yearly sum, of [*annuity*] pounds of lawful money of Great Britain [and Ireland], to be yearly issuing, payable, and going out of the said messuage, &c. thereby released, with the appurtenances, payable half yearly, on the days therein mentioned, free from taxes, that is to say, *To the use*, intent and purpose, that the said [*trustees*], their heirs and assigns, should and might have, receive and take, yearly and every year, for and during the term of the natural life of the said , the wife of the said [*husband*], the annual rent charge, or yearly sum of [*annuity*] pounds, to be yearly arising, payable, and going out of the said hereditaments and premises, thereby granted and released, and to be paid and payable to them, their heirs and assigns, at the days and times, and in the manner thereinbefore expressed; *Upon the trusts* nevertheless, and to and for the ends, intents, and purposes, thereinafter mentioned, expressed, and declared, of and concerning the same: *and* from and after the decease of the said [*wife*], Then to the use, intent, and purpose that the said [*husband*] and his assigns should and might have, receive, take, and enjoy, yearly and every year, for and during the term of his life, the annual rent charge, or yearly sum of [*annuity*] pounds, to be yearly arising, payable, and going out of the said hereditaments and premises, thereby granted and released, and to be paid and payable to him and them, at the days and times, and in manner thereinbefore expressed: *With* remainder, *To the use*, intent, and purpose, that the said [*trustees*] and their heirs, should and might have, receive, and take the said annual rent charge or yearly sum of [*annuity*] pounds: *In trust* to support the contingent remainders; *With* remainder *To the use*, intent, and purpose, that any such child or children of the said [*husband*] on the body of the said [*wife*], begotten or to be begotten, should and might have, receive, and take, from and after the death of the survivor of them, the said [*husband*] and his wife, the said annual rent charge or yearly sum of [*annuity*] pounds, or in such parts, shares, and proportions, in case there shall be two or more such children, and for such estate and estates, and in such manner, and with, under, and subject to such powers, provisoes, conditions, and restrictions, and with such limitations over (such limi-

ON SALE OF INTAILED RENT CHARGE, THAT TENANT IN TAIL SHALL CONCUR.

tations over to be for the benefit of some or one of the said children) as the said [*husband*] and his wife, at any time or times during their joint lives, by any deed or deeds, writing or writings, with or without power of revocation, sealed and delivered by them respectively, in the presence of, and attested by, two or more credible witnesses, should jointly direct, limit, or appoint; *And* in default of such joint direction, limitation, or appointment, Then as the survivor of them the said [*husband*] and his wife, at any time or times during his or her life, by any deed or deeds, writing or writings, with or without power or revocation, sealed and delivered by him or her, in the presence of, and attested by, two or more credible witnesses, or by his or her last will and testament, signed by him or her, in the presence of, and attested by, three or more credible witnesses, should direct, limit, or appoint; *And* in default of such direction, limitation, or appointment, and as to such part or parts of the said annual rent charge, or yearly sum, whereof no such direction or appointment should be made, *To the use*, intent, and purpose, that the first son of the body of the said [*husband*], on the body of the said , his wife, lawfully begotten, or to be begotten, and the heirs of his body, should and might receive and take the said annual rent charge, or yearly sum of [*annuity*] pounds; *And* in default of such issue, *To the use*, intent, and purpose, that the second and every other son of the said [*husband*] and his wife, lawfully begotten or to be begotten, successively, and according to seniority of age, and priority of birth, and the heirs male of their respective bodies, should and might receive and take the said annual rent charge, or yearly sum of [*annuity*] pounds; *And* for default of such issue, *To the use*, intent, and purpose, that all and every the daughters of the said [*husband*] and his wife, lawfully begotten, or to be begotten, as tenants in common, and the heirs of their respective bodies; and if but one such daughter, then such daughter, and the heirs of her body, should and might receive and take the said annual rent charge, or yearly sum of [*annuity*] pounds, *With* cross remainders between such daughters, in tail, in case of the failure of issue of any

ON SALE OF INTAILED RENT CHARGE, THAT TENANT IN TAIL SHALL CONCUR.

of them; *And* in default of such issue, *To the use*, intent, and purpose, that such person and persons should receive and take the said yearly rent charge, or annual sum, for such estate and estates, and with such remainders over, and upon such trusts, and for such intents and purposes, and charged and chargeable in such sort, manner, and form, and subject to, with, by, and under such powers, conditions, limitations, declarations, and directions, as the said [*wife*], at any time or times during her life, by her last will and testament in writing, or by any writing purporting to be such last will, to be by her signed and published, in the presence of, and attested by, three or more credible witnesses, should direct, limit, or appoint; *And* in default of such direction, limitation, or appointment, *To the use*, intent, and purpose, that the said [*wife*], her heirs and assigns, should and might receive and take, yearly and every year, the said annual rent charge, or yearly sum of [*annuity*] pounds, and to be payable and paid to the said [*wife*], her heirs and assigns for ever, on the days and times, and in manner aforesaid: *Together* with the usual powers of distress and entry upon the said messuage, &c., and perception of the rents and profits thereof, in case the same yearly rent charge should be behind and unpaid, in manner therein mentioned: *And it is* by the said indenture of release, *declared and agreed*, that the said annual rent charge, or yearly sum of [*annuity*] pounds, was so limited to the said [*trustees*] and their heirs, during the natural life of the said [*wife*], *Upon trust* that they the said [*trustees*], and their heirs, should pay over the same, not to the said [*husband*], her husband, or as he should appoint, but to such person and persons, and for such uses, intents, and purposes only, as the said [*wife*] alone, notwithstanding her coverture, and without the order, direction, intermeddling, or control, of the said [*husband*], her husband, should, by any writing or writings, to be signed by her the said [*wife*], with her name of her own proper hand-writing, from time to time direct and appoint, for the personal and particular use and benefit of her the said [*wife*], and with which the said [*husband*], her husband, should not in any wise intermeddle, or have any power to forfeit or incumber the same: *And* for want of,

ON SALE OF INTAILED RENT CHARGE, THAT TENANT IN TAIL SHALL CONCUR.

and until such direction and appointment, into the proper hands of the said [*wife*]: *And* that the receipt or receipts of such person or persons as aforesaid, or of the said [*wife*] alone, under her hand, should, from time to time, notwithstanding her coverture, and whether she should be sole or married, be a sufficient discharge, or sufficient discharges, to the person or persons who should so pay the said annual rent charge, or for so much thereof for which such receipt should be given. AND WHEREAS the said [*husband*] hath issue by the said his wife, [*son*] their eldest son, who hath attained the age of twenty-one years, and several other children. AND WHEREAS the said [*four purchasers*] have contracted with the said [*husband*], and his wife, for the absolute purchase of the said yearly rent charge of [*annuity*] pounds, and the inheritance thereof, in fee simple, free from incumbrances, at or for the price or sum of pounds, in consideration of having the title of the said [*four purchasers*] to the legal and equitable fee simple of the said messuages, &c. charged with the said yearly rent charge, assured and confirmed in manner hereinafter mentioned: AND WHEREAS, in consequence of the absence of the said [*son*], the eldest son of the said [*husband*] and his wife, the fee simple of the said yearly rent charge of [*annuity*] pounds, cannot at present be effectually conveyed, nor can the title to the said messuage, &c. be effectually assured and confirmed; *and* therefore it was agreed, upon the treaty for the aforesaid purchase, that such covenants, and other acts and things, should be entered into, made, and executed by and on the parts of the said [*husband*] and his wife, as hereinafter mentioned, as well for ensuring the performance of the aforesaid contract, on their parts, as for indemnifying the said [*four purchasers*] respectively, and for compensating them, by way of damages, in case of the non-performance of the said contract. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said contract, and in consideration of the sum of pounds of lawful money of Great Britain [and Ireland], to the said [*husband*], and his wife in hand paid, by the said [*four purchasers*], at or before the sealing or delivery of these presents, in full for

Recital, that eldest son has become of age, and that there are other children.

Recital of contract by the four purchasers for purchasing the annuity of the husband and wife, in consideration of having their title confirmed.

Recital of eldest son's absence, whereby purchase of annuity or confirmation of conveyance cannot be perfected; and that therefore the covenants, &c. following, were agreed to be made.

Testatum.

Consideration.

the purchase of the said yearly rent charge of [*annuity*] pounds, and for the confirmation of the title of the said [*four purchasers*], to the said messuage, &c. The receipt whereof he the said [*husband*] doth hereby acknowledge, and thereof and therefrom doth hereby acquit, release, and discharge the said [*four purchasers*], and each and every of them, their, each, and every of their heirs, executors, administrators, and assigns for ever, by these presents, he the said [*husband*], doth hereby for himself, his heirs, executors, and administrators, and the said [*wife*], with respect to, and to the extent of, her separate property and estate, doth hereby for herself, her heirs, executors, and administrators, covenant, promise, and agree to and with the said [*four purchasers*], and each and every of them, their, and each and every of their heirs, executors, administrators, and assigns, that they, the said [*husband*], and his wife, their heirs, executors, or administrators, or some or one of them, shall and will, within the space of years, next ensuing the date of these presents, or in case the said [*son*], the eldest son of the said [*husband*] and his wife, shall die within that period, without having made, done, or executed any act or assurance to affect the aforesaid yearly rent charge and premises; Then within six calendar months after, any other of the children of the said [*husband*], and his wife, shall, either with or without the said [*husband*], and , his wife, [*trustees*], or any of them, be competent, with other necessary parties, (if any,) to convey the legal and equitable fee simple of the said yearly rent charge of [*annuity*] pounds, or immediately after the decease of all the children of the said [*husband*], and his wife, in case they shall all die within the aforesaid periods, before such conveyance, assurance, and confirmation shall be made, as hereinafter mentioned, and without having done or executed any other act or assurance to affect the premises, at the expense of the said [*four purchasers*], or some of them, or their, or some of their heirs, executors, or administrators, (except the expense of, or attending any fine or recovery, which may be necessary, to complete the title of the vendors,) cause or procure all necessary and proper parties, by such good and sufficient conveyances

ON SALE OF INTAILED RENT CHARGE, THAT TENANT IN TAIL SHALL CONCU .

Vendor covenants; and his wife, as to her separate property, covenants,

that they, or their heirs, &c.

or their first, or some other son, shall convey,

at the purchasers' expense, (except fines, &c.)

ON SALE OF INTAILED RENT CHARGE, THAT TENANT IN TAIL SHALL CONCUR.

and assurances as shall be effectual in law and equity, and as the counsel of the said [*four purchasers*], or their respective heirs or assigns, shall advise or require, not only to convey and assure unto and to the use of the said [*four purchasers*] respectively, as tenants in common, and their respective heirs and assigns, or otherwise as they shall respectively, as to their respective fourth parts, direct or appoint, the legal and equitable inheritance in fee simple, of and in the said yearly rent charge, or annual sum of pounds, free from incumbrances, but also to assure and confirm the title of the said [*four purchasers*], respectively, and their respective heirs and assigns, of, in, and to the said messuage, &c. charged with the said yearly rent charge of [*annuity*] pounds, as hereinbefore mentioned, and the inheritance in fee simple of the said messuage, &c.

Annuity, and confirm purchasers' title to lands.

Covenant by husband for peaceable enjoyment by purchasers, until conveyance and confirmation shall be made.

And in further pursuance of the said recited contract, and in consideration of the premises, the said [*husband*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*four purchasers*], and every of them, jointly and severally, and with their respective heirs and assigns; that henceforth in the meantime, and until such conveyance, assurance, and confirmation, as aforesaid, shall be made and executed pursuant to the covenant hereinbefore for that purpose contained, it shall be lawful for the said [*four purchasers*] respectively, and their respective heirs and assigns, to have, retain, possess, and enjoy the said yearly rent charge, messuage or tenement, and premises, without any let, suit, trouble, denial, eviction, or disturbance of, from, or by the said [*husband*] and his wife, or either of them, or any other person or persons whomsoever, free from and discharged of all incumbrances whatsoever.

Appointment by wife of the annuity during her life to the purchasers.

And in further pursuance of the said recited contract, and in consideration of the premises, the said [*wife*], in pursuance and by virtue, and in exercise and execution of every power, right, and authority to her reserved, in her vested, or in any wise enabling her in this behalf, *doth* by these presents, under her hand and seal, direct and appoint the said [*trustees*] and their heirs, henceforth until such conveyance, assurance, and confirmation, shall be made and executed as aforesaid, if the said [*wife*] should so long live, to pay the said yearly rent

charge of pounds, when and as the same shall from time to time become due and payable, unto the said [*four purchasers*] equally between them, as tenants in common, and their respective heirs and assigns. AND in further pursuance of the said recited contract and agreement, and in consideration of the premises, the said [*husband*], for himself, his heirs, executors, and administrators, *doth* hereby further covenant, promise, and agree, with and to the said [*four purchasers*], each and every of them, jointly and severally, and their respective heirs, executors, administrators, and assigns, that in case such conveyance, assurance, and confirmation, of the said yearly rent charge, messuage, &c. should not be made and executed as aforesaid, within the time, and pursuant to the covenants hereinbefore for that purpose contained, and according to the true intent and meaning of these presents, then and in such case, and immediately after default shall be made in making and executing such conveyance, assurance, and confirmation as aforesaid, he the said [*husband*], his heirs, executors, or administrators, shall and will pay, or cause to be paid, unto the said [*four purchasers*], in equal shares, or their respective heirs, executors, administrators, or assigns, the said purchase money or sum of pounds of lawful money of Great Britain [and Ireland], with interest for the same after the rate of 5*l.* for every 100*l.* by the year, to be computed from the date hereof, free from taxes, and without any deduction, except for and on account of the said annual rent charge of [*annuity*] pounds: AND ALSO shall and will, over and above the several payments aforesaid, pay unto the said [*four purchasers*], in equal shares, or their respective heirs, executors, administrators, or assigns, the sum of pounds of like lawful money by way of liquidated damages, for the non-performance of the aforesaid contract and covenant, on the part of the said [*husband*] and his wife, for the conveyance, assurance, and confirmation of the said yearly rent charge, messuage, &c. as hereinbefore mentioned, and not by way of penalty. AND IT IS HEREBY AGREED AND DECLARED, that after payment of the said sum of [*purchase money for annuity*] pounds, and interest, and the said sum of [*liquidated damages*] pounds, pursuant to

ON SALE OF INTAILED RENT CHARGE, THAT TENANT IN TAIL SHALL CONCUR.

Covenant by husband, that in case no conveyance and confirmation should be made, to repay the purchase money.

And also to pay a sum as liquidated damages.

Agreement, that after payment of purchase money and liquidated damages, appointment by wife to cease.

On sale of intended assignment, that tenant to have option of purchase.

the covenant aforesaid, the appointment hereinbefore made by the said [wife] shall cease and determine. And whereas it was agreed upon the treaty for the aforesaid purchase that the said [husband] should secure unto the said [four purchasers], their executors, administrators, and assigns, the payment of the sum of [purchase money for warranty], pounds and interest, by way of mortgage, upon the leasehold hereditaments hereinafter mentioned, as a fund, as far as the same will extend, for securing the payment of the said several sums of money hereinbefore covenanted to be paid by the said [husband], his heirs, executors, or administrators: And in pursuance of the said lastly mentioned agreement, by indenture bearing even date with these presents, and made between the said [husband] of the one part, and the said [four purchasers] of the other part, the said [husband] hath demised and assigned unto the said [four purchasers], their executors, administrators, and assigns, All that, &c. To hold the same unto the said [four purchasers], their executors, administrators, and assigns, during the then residue of the term therein of years, wanting days: Subject to a proviso therein contained, for redemption of the premises, on payment by the said [husband], his executors, administrators, or assigns, unto the said [four purchasers], their executors, administrators, or assigns, of the sum of [purchase money for warranty] pounds, on the day of , now next ensuing, with interest for the same, after the rate of five pounds per centum per annum. Now this indenture further witnesseth, and it is hereby agreed and declared between and by the said parties hereto, that they the said [four purchasers], their executors, administrators, and assigns, shall and do henceforth, until such conveyance, assurance, and confirmation shall be made and executed as aforesaid, or until default shall be made in making such conveyance, assurance, and confirmation as aforesaid, continue the said sum of [purchase money for warranty] pounds upon the security of the said leasehold premises, without requiring the payment of the intermediate interest thereof. And in case such conveyance, assurance, and confirmation of the said yearly rent charge, messuage, &c. as aforesaid, should

Second, that the purchase money should be secured by a mortgage to the four purchasers.

Recital of the mortgage.

Further assurance.

Until conveyance and confirmation are made, or default made therein, payment of interest not to be required.

In case such conveyance and confirmation are not made, pur-

ON SALE OF INTAILED RENT CHARGE, THAT TENANT IN TAIL SHALL CONCUR.

not be made within the time, and pursuant to the covenant aforesaid, and according to the true intent and meaning of these presents, THEN UPON TRUST that they the said [*four purchasers*], their executors, administrators, or assigns, shall and do, as soon as may be then after, call in, and compel payment of the said sum of [*purchase money for annuity*] pounds, and the interest to accrue due thereon, from the date hereof; AND shall and do pay and apply the same respectively, as far as the same will extend, in or towards payment and satisfaction, unto them the said [*four purchasers*] respectively, and their respective heirs, executors, administrators, and assigns, of the said sum of [*purchase money for annuity*] pounds, and interest, and of the said sum of [*liquidated damages*] pounds, or either of them, or of so much thereof respectively, as shall be due and unpaid at the time of the receipt of the said sum of [*purchase money for annuity*] pounds, and interest: AND *subject* and without prejudice to the trusts aforesaid, UPON TRUST that they the said [*four purchasers*], their executors, administrators, and assigns, shall and do stand possessed of, and interested in, the said sum of [*purchase money for annuity*], and interest, or so much thereof as shall not be disposed of under the trust aforesaid, IN TRUST for the said [*husband*], his executors, administrators, and assigns. IN WITNESS, &c.

chasers to compel payment of purchase money and interest.

And apply the same in discharging purchase money and liquidated damages;

and hold the residue in trust for husband.

ON A PURCHASE WITH A DEFECTIVE TITLE.

AGREEMENT *between two Vendors and a Purchaser, where Money to be paid on a Valuation of Timber is to be invested in the Names of Trustees, until a Title can be made to a Part; outstanding Terms assigned; and Title Deeds found; and in the mean Time, as an* INDEMNITY *to the* PURCHASER.

ARTICLES OF AGREEMENT *indented*, made, and agreed upon, the day of , 18 ,

Parties. BETWEEN [*one of the vendors*], of, &c. widow and relict, and sole executrix named and appointed in and by the last will and testament of [*testator*], late of the same place, , deceased, and [*the other vendor*], of, &c.; and which said [*vendors*] are the devisees *in trust*, named in the same will, of the one part; and [*purchaser*], of, &c. of the other part.

Recital of mortgage in fee by husband, to the trustees of his marriage settlement, on their transferring to him the trust funds.

WHEREAS by indentures of lease and release, by way of mortgage, bearing date respectively on or about the and days of 17 , and made or expressed to be made between the said [*testator*] of the one part, and [*mortgagees*], of, &c. of the other part, the said [*testator*], in consideration of the sum of pounds, paid to him by the said [*mortgagees*], granted and released unto, and to the use of the said [*mortgagees*], their heirs and assigns, a certain manor, or reputed manor, and other hereditaments and premises, situate, &c. *subject nevertheless* to a proviso for redemption, on payment by the said [*testator*], his heirs, executors, or administrators, unto the said [*mortgagees*], or the survivor of them, or his executors, administrators, or assigns, of the said sum of pounds, and interest thereon, at the rate of five pounds per centum per annum, on a day therein

ON A PURCHASE WITH A DEFECTIVE TITLE.

mentioned, and long since past: WHICH said indenture of release contains a declaration by the said [*mortagees*], that the said mortgage money was produced by the sale of thousand pounds, three pounds per centum consolidated bank annuities, transferred to them by virtue of an indenture, bearing date on or about the day of 17 , being a settlement made previous to the marriage of the said [*testator*], deceased, with [ ], his former wife; and that the said mortgage money was subject to the several trusts in such indenture of settlement contained, respecting the said thousand pounds, three pounds per centum consolidated bank annuities: AND WHEREAS, by indentures of lease and release indorsed on the said recited indentures of lease and release by way of mortgage, and bearing date respectively, on or about the and days of 17 , and made or mentioned to be made between the said [*surviving mortgagee*] of the one part, and [*daughters of testator*], of, &c. of the other part; *reciting* the death of the said [*testator*] and [ ], his former wife, leaving the said [*daughters*], their only children, who, as such, were entitled equally between them to the sum of thousand pounds, secured by the said recited mortgage: *And also reciting* the death of the said [*deceased mortgagee*]; *and* that the said [*daughters*] had requested the said [*surviving mortgagee*] to assign the mortgage money, and convey the mortgaged premises, to them; and which was accordingly done by the indentures of lease and release now in recital; *But subject nevertheless* to such equity of redemption as was contained in the first recited indenture of release, of the day of , 17 ; *as* by the said several recited indentures, reference thereto being had, will more fully appear: AND WHEREAS the said [*vendors*], as such devisees *in trust* as aforesaid, did lately contract and agree with [*agent for purchaser*], of, &c. for the sale to him of the fee simple and inheritance of *All that* then lately newly-erected capital messuage, or dwelling-house, with the garden and outhouses thereto belonging; *And also all that* the estate, manor, and demesne lands, farms, houses, lands, woodlands, underwoods, tenements, and hereditaments, to the said mes-

Recital of declaration, that mortgage money was trust money, and settled on the marriage of mortgagor, with his late wife.

Recital of transfer of mortgage, from trustee to two daughters, the only children of the marriage.

Recital of contract for purchase of the estate.

ON A PURCHASE WITH A DEFECTIVE TITLE.

suage, estate, and manor belonging, or in any wise appertaining, or therewith held, deemed, taken, or known as part, parcel, or member thereof, or of any part thereof; *Together* also with the portion of two-thirds of tithes in and upon certain parts of the said demesne lands, containing about acres; *Which* tithes were described to be then lately purchased by the said [*testator*], deceased, of (A. B.); *And* which manor, hereditaments, and premises, were, by a printed particular, mentioned to be annexed to, and referred to by the said contract now in recital, described to be situated in the county of , with the appurtenances, free from incumbrances (*except* a yearly rent of shillings, payable by way of fee farm-rent), at or for the price or sum of thousand pounds: *And it was thereby further agreed*, that the said [*agent for purchaser*] should further pay to the said [*vendors*], their heirs and assigns, for all the timber, including the bark tops and lops, growing upon the whole of the estate and premises, as the same should be measured and valued by two indifferent persons or their umpire, one of such indifferent persons to be chosen by the said [*vendors*], and the other by the said [*agent for purchaser*]; in which measurement and valuation all timber trees and saplings growing on the said premises, which were of the value of (*one shilling*), or above that value, were to be estimated according to the usual manner and custom of valuing timber. AND WHEREAS the said contract so made by the said [*agent for purchaser*] was so made and entered into by him on the behalf of, and in trust for the said [*purchaser*]. AND WHEREAS the said manor or reputed manor, newly erected capital messuage, and other messuages, tenements, farms, lands, woodlands, hereditaments, and premises, contracted to be sold as aforesaid, comprised all the said manor, hereditaments, and premises, so mortgaged by the said [*testator*] as aforesaid, *except* such part of the lands belonging to the same as had been conveyed or agreed to be conveyed, by the said [*testator*] deceased, in his lifetime, and after making the said recited mortgage as aforesaid, to the said [A. B.], in exchange for the said portion of tithes included in the said recited contract for sale, and also for all those several

Recital of agreement, that timber should be valued.

Recital, that contract was made by agent on behalf of principal.

Recital, that the premises contracted to be purchased, comprised all the premises mortgaged by the testator, *except* such part as he had conveyed in exchange for tithes and lands.

ON A PURCHASE WITH A DEFECTIVE TITLE.

pieces or parcels of arable land, situate, lying, and being dispersedly in the common fields of and within the manor of aforesaid, containing by estimation, acres roods and perches (more or less), then or then lately in the possession of , under or by virtue of a copyhold or customary grant thereof, for lives, which same acres roods and perches were likewise included in such recited contract of sale. AND WHEREAS upon investigating the title to the said two third parts of tithes, and the said acres roods and perches of commonable land, it appears that the same is either defective or cannot at present be made good; *and therefore* it hath been agreed between the parties hereto, that a conveyance shall now be taken of the said manor or reputed manor, newly erected capital messuage, and other messuages, tenements, farms, lands, woodlands, hereditaments, and premises, comprised in the said recited indentures of mortgage, of the and days of 17 , and being the whole of the premises thereby mortgaged, (except as aforesaid) unto and to the use of, and in trust for the said [*purchaser*], his heirs and assigns: *but* that no conveyance shall now be taken of the said portion of tithes and commonable land, so had in exchange as aforesaid, on account of the title thereto not being at present made good as aforesaid; *Although* it hath nevertheless been agreed that the said [*purchaser*] shall immediately enter into and be entitled to the rents, issues, and profits, and become possessed of the same respectively. AND WHEREAS it hath been agreed by and between the said [*vendors*], and the said [*purchaser*], that the sum of thousand pounds mentioned in the said recited contract, shall be immediately paid, pursuant to the terms thereof: *and* that the timber and wood thereby agreed to be measured and valued, shall be measured and valued accordingly, before the day of , next ensuing the date hereof; *and* the amount of the valuation paid as herein after mentioned: AND WHEREAS it also appears that there are two terms of (*two*) hundred years and (*five*) hundred years, comprising the said manor, hereditaments, and premises, so mortgaged by the said [*testator*], deceased, to the said [*mortgagees*], as herein before recited; the term of (*two*)

Recital of defect in title to tithes, and lands taken in exchange.

Recital of agreement, that a conveyance should be made of the other parts;

but no conveyance to be made of tithes and lands taken in exchange.

Yet purchaser to be entitled to the beneficial enjoyment thereof.

Recital of agreement, that purchase money should be paid, and timber valued.

Recital of two satisfied terms for years;

ON A PURCHASE WITH A DEFECTIVE TITLE.

hundred years, created by indentures of lease and release bearing date respectively on or about the and days of , 17 , by way of settlement, on the marriage of [C. D.] and [E. F.], therein respectively described; *and* the said term of (*five*) hundred years, created by indenture of demise or mortgage, bearing date on or about the day of 17 , made by the said [C. D.] to [G. H.] and [I. K.], therein respectively described, for securing the sum of thousand pounds and interest; *and* there being no evidence of such terms ever having been assigned to attend the inheritance of the premises, expectant thereon, it hath been required, on the part of the said [*purchaser*], that the same shall be regularly assigned to a trustee, or trustees, of his own nomination, for his use, and to attend the inheritance of such parts of the same premises as have been contracted to be purchased by him as aforesaid; *but* by reason of its being difficult to find the legal personal representatives of the respective persons, in whom the said two several terms were originally vested; *and* as it will require some time to get the said assignments made, it hath been proposed and agreed, by or on the behalf of the said [*vendors*], to enter into a covenant for procuring the requisite assignments thereof, in manner hereinafter mentioned: AND WHEREAS it likewise appeareth that an indenture of mortgage, bearing date on or about the day of , 17 , and made between, &c. and whatsoever assignments thereof had been made and executed between the said date of such mortgage and the day of , 17 , when an assignment of the same was made to the said [*testator*], deceased, are not amongst the title deeds belonging to the said manor and estate of , but are alleged to have been lost or mislaid, and therefore cannot now be delivered to the said [*purchaser*], on which account it hath been agreed, that the said [*purchaser*] shall be indemnified as hereinafter mentioned: AND WHEREAS, by indentures of lease and release, the lease bearing date the day next before the day of the date of the release, and the release bearing even date with these presents, and made or expressed to be made between the said [*daughters*], therein described, of

which had not been assigned to attend the inheritance, and which the purchaser required;

but on account of difficulty in findingtermors' personal representatives, vendors agree to procure assignments.

Recital, that part of title deeds was missing, and that purchaser should be indemnified on that account.

Recital of conveyance to purchaser.

ON A PURCHASE WITH A DEFECTIVE TITLE.

the first part, the said [*vendors*] of the second part, the said [*agent for purchaser*] of the third part, the said [*purchaser*] of the fourth part, and [*trustee to prevent dower*], therein described, of the fifth part; *The* said manor, or reputed manor, newly erected capital messuage, and such of the said hereditaments comprised in the said recited indentures of mortgage, of the and days of , 17 , as were with the said portion of tithes and commonable land agreed to be purchased by the said [*agent for purchaser*] as aforesaid, *Have*, in consideration of the said principal sum of [*mortgage money*] thousand pounds, (all interest thereon having been previously paid), to the said [*daughters*], parties thereto, expressed to be paid by the said [*purchaser*], and of the sum of thousand pounds, (making together the said sum of [*purchase money*] thousand pounds) to the said [*vendors*], expressed to be also paid by the said [*purchaser*]; *been conveyed* and assured, or intended to be conveyed and assured, (with the consent of the said [*agent for purchaser*],) *To the use* of, or in trust for, the said [*purchaser*], his heirs, appointees, and assigns, for ever. NOW THESE PRESENTS WITNESS, that in pursuance of the said recited agreement, *It is hereby mutually covenanted, declared, and agreed,* by and between the said parties hereto, *That* the said timber and wood, upon the said manor, estate, and premises, so conveyed or assured, or intended to be conveyed and assured, to the use of, or in trust for the said [*purchaser*], his heirs, appointees, and assigns as aforesaid, shall be measured and valued, by or before the day of next ensuing the date hereof, according to the mode prescribed by the said recited contract, and the amount of such valuation shall be paid or invested and applied in manner following, that is to say; *In case* a good, sure, and indefeasible title be made out and perfected, to the said two third parts of tithes, and the said acres roods and perches of commonable land, by the said day of next, and the same premises should by that time be conveyed and assured to him the said [*purchaser*], his heirs or assigns, or to such person or persons as he or they should direct or appoint; *And also*, in case

Testatum.

Agreement that timber shall be valued and the money invested;

and if a good title be made to tithes and lands taken in exchange;

Outstanding terms assigned;

ON A PURCHASE WITH A DEFECTIVE TITLE.

and mortgage deed and missing assignments delivered;

or evidence to shew that they are no incumbrance produced.

Then purchaser to pay the amount of such valuation to the vendors.

But in case all the defects are not cleared by the given day,

purchaser to invest the amount of the valuation of the timber in 3 per cents.,

in the names of mutual trustees, to accumulate.

Upon trust, in case defects are

the said two outstanding terms, of (*two*) hundred years, and (*five*) hundred years, if existing, should be regularly assigned by two separate deeds, to a trustee or trustees nominated by the said [*purchaser*], his heirs, appointees, or assigns; *and* if the said mortgage deed of the day of , 17 , and all the missing assignments thereof, should be found and delivered to the said [*purchaser*], his heirs, appointees, or assigns, or proper and effectual releases or acknowledgments for, or evidence legally to show that the debt secured by the said indenture of mortgage of the day of , 17 , was paid off and discharged; *And* that the said assignment of the day of , 17 , was made and executed by the persons entitled to assign such mortgage, and was for the absolute use and benefit of him or them, by or before that time; *Then* he the said [*purchaser*], his executors, administrators, or assigns, shall, on such day of next, pay the full amount of such valuation to the said [*vendors*], their heirs, executors, administrators, or assigns, without any deduction whatsoever; *But* in case the said title to the said portion of tithes and commonable lands should not clearly and to the satisfaction of the said [*purchaser*], his heirs, appointees, or assigns, be made out and perfected, by the said day of next; *or* the said two terms of (*two*) hundred years, and (*five*) hundred years, or either of them, should on that day remain unassigned as aforesaid; *or* the same mortgage deed of the day of , 17 , and all missing assignments, should not be delivered to the said [*purchaser*], his heirs, appointees, or assigns, as aforesaid; or such sufficient releases or acknowledgments as aforesaid, or the evidence before mentioned, should not be produced; *Then* and in each, any, or either of such cases, he the said [*purchaser*], his executors or administrators, shall lay out or invest the amount of the said valuation of timber, in the purchase of three per centum consolidated bank annuities, in the names of mutual trustees; who shall from time to time lay out and accumulate the dividends and interests thereof, *And* stand possessed of and interested in the stock so to be purchased, and the accumulations so to be made as aforesaid, UPON THE TRUSTS following, that is to say; UPON

ON A PURCHASE WITH A DEFECTIVE TITLE.

TRUST, in case the said title to the said portion of tithes and commonable land should be so as aforesaid made out by the day of , 18 , and the said [*purchaser*], his heirs, appointees, or assigns, should have been suffered to hold and enjoy the same, and to receive the rents, issues, and profits thereof, in the mean time, for his and their own use and benefit, and should have had the said two terms of (*two*) hundred years and (*five*) hundred years, if existing, assigned in trust for him or them, as aforesaid, and the said mortgage of the day of 17 , and the missing assignments thereof, or the releases or acknowledgment before mentioned delivered over to him, or such legal evidence produced as aforesaid; *To* transfer the said stock so to be bought, and the dividends in the mean time arising therefrom, unto them the said [*vendors*], their heirs, executors, administrators, or assigns: *But* if such title should not be made out and perfected by the said day of 18 ; *Then* UPON TRUST, to transfer to the said [*purchaser*], his heirs, appointees, or assigns, so much of the said stock and dividends as will produce such a sum as the said portion of tithes and commonable lands shall be valued at, by two indifferent persons, who are to estimate the value according to the relative situation of the same, and considering that the said [*purchaser*] is owner of the said manor and estates; one of such indifferent persons to be named by the said [*vendors*], their heirs or assigns, and the other by the said [*purchaser*], his heirs, appointees, or assigns: *And* in case of such two persons not agreeing, then by a third person, to be chosen by the two persons so first chosen for that purpose; *Together* with any expenses that the said [*purchaser*], his heirs, appointees, or assigns, may be in the mean time put unto, in consequence of his not having his title now completed thereto: *And* the residue of the said stock and dividends (provided the same two terms should be previously assigned, if existing, and the missing deeds or releases, or acknowledgments, delivered as aforesaid, or such evidence as aforesaid, produced,) shall be thereupon immediately transferred to them the said [*vendors*], their executors, administrators, or assigns: *But*,

cleared by an extended certain day, and purchaser should peaceably enjoy in the mean time,

to transfer the stock and the dividends to vendors.

But if such defects be not cleared by the extended given day,

Upon trust to transfer to purchaser so much of the stock as the tithes and lands shall be valued at.

And the residue of the stock and dividends, if title should be cleared, paid to vendors.

But if the title should not be cleared,

ON A PURCHASE WITH A DEFECTIVE TITLE.

if it should happen that the said two terms of (*two*) hundred years and (*five*) hundred years, if existing, or either of them, should be still unassigned, in trust for the said [*purchaser*], his heirs, appointees, or assigns, as aforesaid; or the said mortgage deed of the day of , 17 , and the missing assignments thereof, or any or either of them; or the releases or acknowledgments before mentioned, should not be delivered to him or them, or such legal evidence produced as aforesaid, on the said day of 18 , *Then* such residue to remain vested in the trustees to be named as aforesaid, as an indemnity to the said [*purchaser*], his heirs, appointees, and assigns, against any loss or damage which he or they might or may otherwise sustain, by reason of the said two terms remaining unassigned, in trust for him and them as aforesaid, until both the said terms shall be assigned, to a person or persons to be nominated by the said [*purchaser*], his heirs, appointees, or assigns, and to attend the inheritance, in case the same terms are now existing; *and also* as an indemnity to the said [*purchaser*], his heirs, appointees, or assigns, against any loss or damage which he or they might, or otherwise may sustain, by reason, or in consequence, of the said mortgage deed of the day of , 17 , or any subsequent assignments, not being now delivered to the said [*purchaser*], as a satisfied security, or otherwise, on account thereof, until all the same missing deeds, or the releases, acknowledgments, or evidences beforementioned, shall be delivered or produced as aforesaid: *And* upon those things being severally done, or in case the same terms be not in existence, Then upon the last mentioned indemnity being rendered unnecessary, and upon the said [*purchaser*], his heirs, appointees, or assigns, being reimbursed all damages and expenses, if any, which he or they may have sustained by reason of the said terms not having been assigned to the said [*purchaser*], his heirs, appointees, and assigns, and of the non-delivery of the same missing deeds upon the execution of these presents, or in any manner respecting the same deeds, such trustees may lawfully, and are hereby authorised to transfer the same stock and dividends to the said [*vendors*], their executors, administrators, or

then stock to remain in trustees, as an indemnity to purchaser.

When indemnity is rendered unnecessary, and purchaser reimbursed all damages on account of defect, to transfer stock to vendors.

ON A PURCHASE WITH A DEFECTIVE TITLE.

If the first defect be cleared, still the whole funds to be invested, as an indemnity against the other defects.

assigns. And if it should happen that a good, sure, and indefeasible title shall be made out and perfected to the said two third parts of tithes, and the said acres, roods, and perches, of commonable land, by the said day of , 18 , but the said two terms, or one of them, shall then remain unassigned, in trust for the said [*purchaser*], his heirs, appointees, or assigns, as aforesaid; *or* the said missing deeds or any of them shall not be delivered as aforesaid; *or* the releases, acknowledgments, or evidences, shall not be delivered or produced as aforesaid; Then the said stock and dividends shall, notwithstanding such title being made as aforesaid, remain vested in the trustees to be named as aforesaid, as an indemnity to the said [*purchaser*], his heirs, appointees, and assigns, against any loss or damage which he or they might or may otherwise sustain, by reason of the said two terms remaining unassigned, in trust for him and them, as aforesaid, until both the same terms shall be assigned to a person or persons to be nominated by the said [*purchaser*], his heirs, appointees, or assigns, and to attend the inheritance; *And also* as an indemnity to the said [*purchaser*], his heirs, appointees, or assigns, against any loss or damage which he or they might or may otherwise sustain, in consequence of the said mortgage deed of the day of , 17 , or any subsequent assignment thereof, not being now delivered to the said [*purchaser*], as a satisfied security, or otherwise, on account thereof, until all the same missing deeds, or the releases, acknowledgment, or evidence before mentioned, shall be delivered or produced as aforesaid. And upon those several things being done; *And* the said [*purchaser*], his heirs, appointees, or assigns, being reimbursed all damages and expenses, if any, which he or they may have sustained, by reason of the said terms not having been assigned, in trust for the said [*purchaser*], his heirs, appointees, or assigns, upon the execution of these presents, or by reason of the said mortgage of the day of , 17 , and any assignments not being delivered as aforesaid, as satisfied securities, such trustees may lawfully, and are hereby authorised, to transfer the same to the said [*vendors*], their executors, administra-

ON A PURCHASE WITH A DEFECTIVE TITLE.

tors, or assigns. And the said [*vendors*] do hereby for themselves, jointly and severally, and for their respective heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*purchaser*], his heirs, and assigns, That they the said [*vendors*], or one of them, his or her heirs, executors, or administrators, shall and will, at his or her own expense, by or before the day of , 18 , procure the said two several terms of (*two*) hundred years and (*five*) hundred years, so far as the same respects the said premises, in and by the said recited indenture of release, bearing even date with these presents, granted and released, to be legally and effectually assigned unto such person or persons as he the said [*purchaser*], his heirs, appointees, or assigns, shall for that purpose nominate and appoint, *Upon trust*, for the said [*purchaser*], his heirs, appointees, and assigns, and to attend the reversion, freehold, and inheritance of the same premises, in order to protect the same from all mesne charges and incumbrances, if any such there be; And also shall and will forthwith use their utmost endeavours to find the said mortgage of the day of 17 , and all missing assignments thereof; and upon the same deeds, or any of them, being found, shall and will immediately deliver them to the said [*vendor*], his heirs, appointees, or assigns, for his or their own use and benefit. In witness, &c.

Covenant by vendors to procure the two terms to be assigned;

And to use their utmost endeavors to find the other deeds.

TO REPURCHASE IF TITLE-DEEDS ARE NOT FOUND.

AGREEMENT *by a Vendor to* REPURCHASE *Premises, within a limited period, if the Title Deeds are not found.*

ARTICLES OF AGREEMENT *indented*, made, and entered into, the day of , in the year of our Lord, 18 , BETWEEN [*vendor*] of, &c. of the one part, and [*purchaser*] of, &c. of the other part. Parties.

WHEREAS the said [*purchaser*] hath purchased of the said [*vendor*], a certain messuage or tenement, garden, and premises, situate at in the county of , and the inheritance thereof in fee simple, at or for the price or sum of thousand pounds; *And* by indentures of lease and release, bearing date respectively on or about the and days of instant, and made between the said [*vendor*] of the one part, and the said [*purchaser*] of the other part, the said [*vendor*] hath, in consideration of the said sum of thousand pounds, granted, released, and conveyed, or otherwise assured, the said messuage or tenement, garden, and premises, with their appurtenances, unto the said [*purchaser*], his heirs and assigns: AND WHEREAS the title deeds and writings relating to the said premises, have been lost or mislaid, and previously to the completion of the said purchase, [and payment of the said sum of thousand pounds, the consideration for the purchase thereof,] it was agreed between the said parties, that in case the said [*purchaser*], his heirs, appointees, or assigns, should at any time after the expiration of the term of (*three*) years, and within the term of (*nine*) years, to be computed from the date hereof, be desirous of selling the said premises, at or for the price or sum of [*purchase money*] thousand pounds; and in case the said [*purchaser*], his heirs, appointees, or assigns, should give unto the said [*vendor*], his heirs, executors, or administra-

Recital of purchase,

and conveyance of premises.

Recital of the loss of title deeds, and agreement for repurchase, in case they should not be found within a limited period.

TO REPURCHASE IF TITLE DEEDS ARE NOT FOUND.

tors (*six*) calendar months notice of such desire, then and in such case the said [*vendor*], his heirs, executors, or administrators, shall at the expiration of the said (*six*) calendar months for which such notice shall be given, if the whole of the said deeds and writings shall not have been previously found and delivered to the said [*purchaser*], his heirs, appointees, or assigns, repurchase the same premises, at or for the price or sum of [*the present purchase-money*]

Testatum.

thousand pounds. NOW THESE PRESENTS WITNESS, *and it is hereby agreed and declared* between and by the said parties hereto, and the said [*vendor*] for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said [*purchaser*], his heirs, appointees, and assigns, That in case the said [*purchaser*], his heirs, appointees, or assigns, should at any time after the expiration of (*three*) years, and within the space or term of (*nine*) years, to be computed from the date hereof, be minded and desirous to sell the said messuage, or tenement, garden, and premises, comprised in the said indenture of release, bearing even date herewith, and of such his or their desire, shall give unto the said [*vendor*], his heirs, executors, or administrators, or leave at his or their usual place of residence, (*six*) calendar months' notice in writing, Then and in such case, and at the expiration of the (*six*) calendar months, for which such notice shall be given, if the deeds and writings mentioned in the first schedule hereunder written, should not previously thereto have been found, and delivered to the said [*purchaser*], his heirs, appointees, or assigns, whole and undefaced, he the said [*vendor*], his heirs, executors, or administrators, shall and will purchase the said messuage or tenement, garden, and premises, of and from the said [*purchaser*], his heirs, appointees, or assigns, at or for the price or sum of

Covenant by vendor, that if purchaser should require him to purchase premises within a limited period, before the deeds should be found,

that he will purchase accordingly, at the sum now paid by purchaser.

Agreement by purchaser to convey accordingly;

thousand pounds: AND THE SAID [*purchaser*] doth hereby agree that, on payment of the said sum of thousand pounds, pursuant to the aforesaid agreement, he the said [*purchaser*], his heirs, appointees, or assigns, and all other persons claiming through or under him, shall and will, at the request, cost, and charges of the said [*vendor*], his heirs, executors, or administrators, convey

and assure the said messuage or tenement, garden and premises, with the appurtenances, unto and to the use of the said [*vendor*] and his heirs, or as he or they shall direct or appoint, free from all incumbrances, made, done, or committed by the said [*purchaser*], his heirs, appointees, or assigns: *And further*, that in case the said [*vendor*], his heirs, executors, or administrators, should be called upon to repurchase the said messuage or tenement, garden, and premises, in pursuance of the agreement hereinbefore for that purpose contained, the same premises shall, at the time of such repurchase, be in good and tenantable repair; *and*, upon the completion of such purchase, the same premises, together with the several fixtures, mentioned in the second schedule hereunder written, shall be delivered to the said [*vendor*], his heirs or assigns, in as good order and condition, in all respects, as the same now are: PROVIDED ALWAYS, that these presents shall not, nor shall the said recited indentures of lease and release, be considered, construed, or taken to be a mortgage or security for money, or any thing in the nature of a mortgage or security for money; nor shall the same give, or be construed to give, unto the said [*vendor*], his heirs, executors, administrators, or assigns, any right, title, or equity, to redeem the said premises, upon payment of the said purchase money, or said sum of thousand pounds, with interest: PROVIDED ALSO, that in case the said deeds and writings, mentioned in the said first schedule hereunder written, should, previously to any such notice as aforesaid, or to the expiration of the said (*six*) calendar months, for which such notice shall be given or left as aforesaid, be found and delivered to the said [*purchaser*], his heirs, appointees, or assigns, whole and undefaced; Then and in such cases, these presents, and every thing herein contained, shall cease, determine, and be void: IN WITNESS whereof the parties above named have hereto set their hands and seals, the day and year first above written.

TO REPURCHASE, IF TITLE DEEDS ARE NOT FOUND.

and that in case of repurchase, the premises shall be in good repair;

and the fixtures in schedule, in as good state as at present.

Agreement not to be deemed a mortgage.

In case the deeds should be delivered, agreement to be void.

THE FIRST SCHEDULE to which the above written agreement refers.

THE SECOND SCHEDULE to which the above written agreement refers.

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

AGREEMENT *between the Vendors and Purchaser of an Estate in Fee Simple, to refer to Arbitration or Umpirage the Question, whether certain Lands were included in the Contract; and what Compensation the Purchaser should receive, in consequence of Part of the Premises being discovered to be of a Leasehold instead of a Freehold Tenure:* very specially drawn.

Parties.

ARTICLES OF AGREEMENT *indented,* made, and concluded the day of 18 , BETWEEN [*three vendors*], of, &c. (devisees in trust, and executors named in the last will and testament of [*testator*], late of, &c. esquire, deceased) of the one part, and [*purchaser*], of, &c. of the other part.

Recital of contract for purchase of certain premises.

WHEREAS the said [*vendors*], as devisees in trust as aforesaid, did in or about the year 18 , by writing under their hands, contract with the said [*purchaser*] for the absolute sale to him of the several manors of and ; and of divers farms, lands, tenements, and other hereditaments, situate or being in or near the county of , and the inheritance thereof, in fee simple, at or for the price or sum of pounds; *Among* which hereditaments so contracted to be sold are included a farm, and lands, called [*Acre*] Farm; and also certain lands called [*Evergreen*] Lands; and also a house and gate-room hereinafter mentioned; which sale so made to the said [*purchaser*] hath not yet been completed.

Recital of agreement to relinquish part of premises, and allow proportion of rent, on having a compensation.

AND WHEREAS the whole of the said farm and lands called [*Acre*] Farm, and now let upon lease, under the yearly rent of pounds, is included in the contract for the sale, so agreed to be made to the said [*purchaser*] as aforesaid; and as the said [*purchaser*], at the

special instance and request of the said [*vendors*], hath consented and agreed, that such part of the said farm, called [*Acre*] Farm, and containing acres roods and perches, or thereabouts, as is specified in the schedule hereunder written, shall be discharged from the said recited contract, in consideration that the said [*purchaser*] shall be allowed out of the said purchase-money, a compensation for the loss of the said acres roods and perches of land, the purchase of which shall be so relinquished by the said [*purchaser*] as aforesaid; and that the said [*purchaser*] should have and be entitled to the yearly rent or sum of [*apportioned rent*] pounds, to be paid and payable, in respect of the remaining part of the said farm and lands, called [*Acre*] Farm, which is retained by, and intended to be conveyed to the said [*purchaser*], as and for the apportioned part of the aforesaid yearly rent of [*whole rent*] pounds. AND WHEREAS it hath been agreed between the said [*vendors*] and [*purchaser*], that the value of the lands, mentioned and specified in the schedule hereunder written, being part of [*Acre*] Farm aforesaid, shall be ascertained by two indifferent persons, one of whom shall be chosen by the said [*vendors*], and the other of them by the said [*purchaser*]; and that in case such two persons should not agree in their valuation, then the same shall be ascertained by such one person as the said two first referees shall for that purpose appoint; and the value of the said lands so to be ascertained, shall be deducted by the said [*purchaser*], out of his said purchase-money, by way of compensation. AND WHEREAS by indenture, dated on or about the day of 17 , and made between [*one of the lessors*], of, &c. widow, of the first part, [*the other lessor*], of, &c. spinster, of the second part, and [*lessee*], of, &c. of the third part; *Reciting* a license bearing date the day of 17 , under the hand of the deputy steward of the manor of , to the said [*first named lessor*], to let to farm to the said [*lessee*], her moiety of the cottage at in the manor aforesaid, for the term of (*twenty-one*) years from the feast of (*Saint Michael the Archangel*) then last, if the said [*first lessor*] should so long live; *And also* a licence bearing date the day of 17 , under the

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

Recital of agreement to leave value of premises to be relinquished to arbitration,

or umpirage.

Recital of lease of copyhold lands by two tenants in common, with separate licenses of deputy steward.

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

hand of the said deputy steward of the same manor, to the said [*first lessor*], to let to farm to the said [*lessee*], a moiety of one barn and gate-room, and half a yard of land, called the containing acres; *And also* a moiety of a close of land called containing acres; *And also* a moiety of those four closes of land, containing acres, called , in the manor aforesaid, for the term of (*twenty-one*) years, from the feast of (*Saint Michael the Archangel*) then last, if the said [*first lessor*] should so long live: *And also* a license bearing date the day of 17 , under the hand of the said deputy steward, to the said [*second lessor*], to let to farm unto the said [*lessee*], her moiety of the aforesaid cottage in , for the term of (*twenty-one*) years, from the feast of (*Saint Michael the Archangel*) then last, if the said [*second lessor*] should so long live; *And also* a license bearing date the day of 17 , under the hand of the said deputy steward, to the said [*second lessor*], to let to farm to the said [*lessee*], her moiety of the hereinbefore mentioned barn and gate-room, and half a yard of land, called ; *And also* one moiety of a close of land called containing acres; *And also* a moiety of the said four closes of land, called for the term of (*twenty-one*) years, from the feast of (*Saint Michael the Archangel*, then last past, if the said [*second lessee*] should so long live: *And further reciting*, that the said [*lessors*] were entitled to one moiety each, of and in *All that* meadow or pasture ground, containing by estimation acres, lying and being in aforesaid, and then in the tenure or occupation of , during the term of their natural lives; *It is witnessed*, that the said [*lessors*] did demise, grant, and to farm let unto the said [*lessee*], *All* their aforesaid undivided moieties of and in the several copyhold messuages and tenements above mentioned; *And* all their aforesaid undivided moiety, or half part each, of and in, *All that* meadow or pasture ground above mentioned; All which premises were then in the tenures or occupations of the said [*lessee and others*]; *To hold* the same unto the said [*lessee*], his executors, administrators, and assigns, from the feast of (*Saint Michael the Archangel*) then last past, for the term of (*twenty-one*)

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

years, *if* the said [*first lessor*] and [*second lessor*] should so long live; *At* the yearly rent of pounds, payable half-yearly, *as* therein mentioned; *And subject* to the covenants and agreements therein contained. AND WHEREAS the said lease granted to the said [*lessee*], as aforesaid, was so granted to him in trust for the said [*testator*], deceased. AND WHEREAS the said [*purchaser*] contends, that the premises hereinbefore mentioned to be comprised in the said indenture of lease, of the day of 17 , are included, or were intended to be comprised in the contract for sale, so made between him and the said [*vendors*], as aforesaid; *and* the said [*purchaser*] claims a compensation, to be deducted out of his said purchase-money, and the amount thereof to be settled as hereinafter mentioned, for the difference in value in the same premises, between a freehold and leasehold tenure; *But* as the premises are not by express words named in the said contract for sale, the said [*vendors*] contend that the said leasehold premises do not, nor were intended, to comprise any part of the estate, so contracted to be sold to the [*purchaser*], as aforesaid. AND WHEREAS in order to put an end to all disputes between the said parties, touching the said leasehold premises, it hath been agreed between them, that it shall be left to two indifferent persons, to determine upon the statements of the parties, and upon such evidence or information, by such other ways and means as they shall think proper, whether the aforesaid leasehold premises were originally intended, or ought under the circumstances of the case to be included or considered as included in the aforesaid contract; one of which said persons to be chosen by the said [*vendors*], and the other by the said [*purchaser*]; *And* in case such two persons cannot agree in their determination, then the same shall be referred to, and determined by such one person, as the said two referees shall for that purpose appoint. AND WHEREAS a similar dispute has arisen between the said parties, respecting a freehold piece or parcel of ground called the [*coppice*], near the , and containing acres, roods, and perches, it being contended by the said [*purchaser*], that the same is, or ought to be included, in his said contract; and it hath been in like manner agreed, that it shall be

Recital, that lease was granted in trust for testator.

Recital of difference between vendors and purchaser, whether leaseholds were included in contract.

Recital of agreement to refer same to arbitration,

or umpirage.

Recital of a similar dispute as to other lands.

Recital of agreement, to leave same to arbitration.

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

left to the said two persons, or their umpire, to determine whether the same were originally intended, or ought under the circumstances of the case, to be considered as included in the said contract. AND WHEREAS by indenture, dated on or about the day of 16 , and made between [*lessor*], of the one part, and [*lessee*] of the other part, *For the consideration* therein expressed; the said [*lessor*] *Did* grant, bargain, sell, and demise unto the said [*lessee*], *All that* messuage or tenement, with the barn and gate-room thereunto adjoining and belonging, situate, lying, and being, in the parish of , in the said county of , then late in the occupation of , with the appurtenances; *To hold* the same unto the said [*lessee*], his executors, administrators, and assigns, for and during the term of thousand years, from the date thereof, under the yearly rent of [*a pepper corn*]; *And* by mesne assignments and other acts, good and available in the law, the said messuage or tenement, with the barn and gate-room thereunto adjoining and belonging, became vested in the said [*testator*], deceased. AND WHEREAS by indenture dated on or about the day of , 17 , and made between the Dean and Chapter of the Cathedral Church of , of the one part, and [*lessee*] of the other part, *The* said Dean and Chapter, for the consideration therein mentioned, *Did* demise, grant, and to farm let, unto the said [*lessee*], *All that* barn, and all those several lands and tenements, with the appurtenances, called (*Evergreen*), situate, lying, and being in the parish of , in the county of , containing by estimation acres, that is to say; *All those* two pieces of meadow ground, with a barn standing in one of them, lying between a meadow belonging to the manor of , on the north part, a meadow formerly of deceased, on the north-west part, and a close of arable land, part of those lands called (*Evergreen*), on the south-west part, containing by estimation acres; two closes of arable land, with a lane there called (*Evergreen*) Lane, having park on the east, and one of the aforesaid two enclosures of meadow ground on the north part, and one of the last mentioned two closes of arable on the east part, containing by estimation acres; *To hold*

Recital of lease of other premises for thousand years,

by mesne assignments vested in testator.

Recital of lease of other premises,

the same unto the said [*lessee*], her executors, administrators, and assigns, from the feast-day of (*Saint Michael the Archangel*) then last past, for the term of (*twenty-one*) years, *Under* the yearly rent, and subject to the covenants therein contained, and on the part of the lessee to be paid, done, and performed. AND WHEREAS by mesne assurances and other acts, good and available in the law, the said barn, lands, and premises, comprised in the said lastly recited indenture of lease, became vested in the said [*testator*], deceased; for the residue of the said term of years. AND WHEREAS the premises hereinbefore mentioned to be comprised in the said recited indentures, of the day of , 16 , and the day of 17 , and the terms of thousand years, and (*twenty-one*) years, thereby respectively created, are admitted by the said [*vendors*] to form a part of the estate and hereditaments, so contracted to be sold to the said [*purchaser*], as aforesaid; *But* inasmuch as the hereditaments so contracted to be purchased by the said [*purchaser*], were considered by him and the said [*vendors*], to be of a freehold tenure, in fee-simple; and the amount of the consideration money to be paid by the said [*purchaser*], for the purchase of the same, having been calculated upon the supposition, that the whole of the said estate and hereditaments were to be conveyed to him in fee simple, it hath been agreed between the said parties hereto, that the said [*purchaser*] shall be entitled to retain by way of compensation, out of his said purchase-money, the difference in value, in respect to the premises comprised in the said recited indentures of demise or lease, of the day of 16 , and day of 17 ; and also in respect to the premises comprised in the said indenture of lease of the day of , 17 , in case it should be ultimately determined, that the same ought to be considered as included in the said contract for sale as aforesaid,—between the leasehold tenure, by which the same premises are respectively holden, and the inheritance in fee simple of the same premises respectively; and that the amount of such difference in value shall be fixed and determined by two indifferent persons, one of whom shall be chosen by the said [*vendors*], and

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

by mesne assignments vested in testator.

Recital, that premises comprised in two last recited leases, are part of the premises contracted to be purchased as freehold.

Recital of agreement, to allow compensation on account

of difference between leasehold and freehold tenure, and to leave same to arbitration or umpirage.

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

the other by the said [*purchaser*]; and that in case such two persons should not agree in their valuation, then the same shall be fixed and determined by such one person as the two first referees shall for that purpose appoint.

Recital of nomination of referees.

AND WHEREAS in pursuance of the said agreement, the said [*vendors*] have nominated [A. B.] of, &c., and the said [*purchaser*] hath nominated [C. D.] of, &c., referees, for the purpose of arbitrating and determining the said

Testatum.

matters and things hereinbefore mentioned. NOW THESE PRESENTS WITNESS, that in consideration of all and singular the premises, *It is hereby agreed and declared*, between and by the said parties hereto, in manner following,

Appointment of arbitrators.

that is to say; THAT the said [*arbitrators*] shall be arbitrators for determining the several matters and things in these presents referred to them, and that they shall determine the same respectively, as soon as conveniently may be

In case of difference, to appoint umpire.

after the execution of these presents; AND THAT in case they should not agree to determine any matter or thing, matters or things, hereby referred to them, the matter or thing, matters or things, of which they shall not agree, shall be referred to, and determined by, such one person as they, the said [*arbitrators*], shall for that purpose appoint; and such appointment of umpire, to be from time to time made as soon as conveniently may be, after such difference

Land relinquished, to be calculated at years' purchase, by arbitrators or umpire.

of opinion shall from time to time arise: THAT the value of the lands mentioned in the schedule hereunder written, being part of (*Acre*) farm aforesaid, calculating such value at years' purchase, at the improved yearly rent thereof, shall be forthwith as soon as may be ascertained and determined, by the said [*arbitrators*], or in case they differ, by their umpire, to be chosen as aforesaid: THAT for the purpose of making such valuation,

Improved annual rent to be ascertained,

the said referees shall previously fix and determine, by such ways and means, and upon such information, as they or he shall think fit, or deem proper, the best and most improved yearly rent, at which the said lands mentioned in the said schedule, ought to be, or to have been, or might have been let, at the date of these presents; and the calculation of such value shall be made upon such improved

and the value allowed purchaser.

rent: THAT the value so to be fixed and ascertained by the said referees, or their umpire, shall be allowed to, and re-

tained by, the said [*purchaser*], by and out of his said purchase money, or sum of pounds: AND THAT the said [*purchaser*], his heirs and assigns, shall be entitled to the yearly rent of [*appointed rent*] pounds, as the apportioned part of the aforesaid yearly rent of [*whole rent*] pounds, to be payable in respect to so much, and such part of (*Acre*) farm aforesaid, as are not mentioned and comprised in the said schedule hereunder written: THAT the said [*arbitrators*], or in case they differ, their umpire, to be chosen as aforesaid, shall, as soon as conveniently may be after the execution of these presents, determine whether the leasehold premises, hereinbefore mentioned to be comprised in the said indenture of lease of the day of , 17 , and the said freehold [*coppice*], near the , or either of them, and any and what part or parts thereof respectively are or is, or ought to be considered as included in, and bound by, the said contract for sale so entered into between the said parties hereto as aforesaid: THAT the said [*arbitrators*], or in case they differ, their umpire, to be chosen as aforesaid, shall forthwith, as soon as may be, ascertain and determine whether the difference in value, in respect to the premises holden under or by virtue of the said indentures of lease or demise, of the day of 16 , and the day of 17 ; and also in respect to the premises comprised in the said lease of the day of 17 , in case the said lastly mentioned premises should be determined to be bound by and included in the said contract for sale as aforesaid—between the leasehold tenures, under or by which the premises comprised in the same indentures are respectively holden, and the fee simple of the same premises respectively; considering in the calculation of such difference in value, the duration of the several terms of years, and the rents, covenants, provisoes and agreements, under, or by which the said leasehold premises are respectively holden, by virtue of the said indentures of lease respectively. THAT the amount and value so to be awarded, fixed, and determined, as the difference in value between a leasehold tenure, and a freehold tenure in fee simple, shall be retained and deducted by the said [*purchaser*], his heirs, executors, administrators or assigns, by way of compensa-

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

Referees, or umpire, to ascertain land included in contract,

and ascertain difference in value, between leasehold and freehold tenure.

Difference in value to be retained by the purchaser.

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

tion, by and out of the said purchase-money or sum of pounds: THAT the award and determination of the said [*arbitrators*], or of their umpire, in or about the premises, or any of them, shall be final and conclusive, between and upon the said [*vendors*], and all persons claiming through or under the said [*testator*], deceased; and the said [*purchaser*], his heirs, executors, administrators and assigns: THAT for the purposes aforesaid, it shall be lawful for the said [*arbitrators*], or their umpire, to obtain information upon or in respect of the premises hereby referred, or any of them, either by the statements of the parties hereto, or any of them, by parol or written evidence, or by such other ways or means, as they or he shall in their or his judgment think most advisable, or deem most applicable to the nature and circumstances of the case: THAT in case the said [*arbitrator*, A. B.] shall die, or refuse, or become incapable to act as arbitrator, before the whole of the premises hereby referred, shall be determined by the said [*arbitrators*], or their umpire, *Then* the said [*vendors*], or the survivors, or survivor of them, or the heirs, executors, administrators, or assigns of such survivor, shall forthwith thereafter nominate and appoint some other person to be arbitrator or referee, in the stead and place of the said [A. B.]; and so in like manner upon the decease or neglect, or refusal to act, of any arbitrator succeeding to the place of the said [A. B.] (*add a similar clause as to* [C. D. *purchaser's*] *arbitrator*): THAT every arbitrator, so to be appointed as a substitute for the said [A. B.] or [C. D.] or any succeeding arbitrator, shall as to such of the premises as shall not at the time of his nomination and appointment be actually determined, or referred to an umpire, have the same powers and authorities as are hereby vested in the arbitrator, in or to whose place he shall come or succeed: THAT the expense of preparing and executing these presents, (and a duplicate hereof), and of making such arbitration or award as aforesaid, or otherwise attending the submission hereby made, shall be borne and paid by the said parties in the proportions following, that is to say; one moiety thereof by the said [*vendors*], as trustees as aforesaid; and the other moiety by the said [*purchaser*]: AND LASTLY, the submission and agreement

Award of arbitrators or umpire to be final.

Arbitrators, or umpire, to obtain evidence by parol, or in writing.

In case of death of vendors' arbitrator before award, they to appoint another.

Same as to purchaser's.

New arbitrators to have same powers as the old arbitrators.

Expense of arbitration to be paid equally.

hereby made, shall be made a rule of his Majesty's court of , at Westminster. In witness whereof, the said parties have hereto (interchangeably) set their hands and seals, the day and year above first written. ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

The schedule to which the above written agreement refers. Schedule.

Agreement for the Sale of a House, Bake-house, Water Grist Mill, and Premises, from two Vendors, in which a Surety *joins for the Purchaser, the Consideration being a gross Sum of Money, and* two Life Annuities *to the Vendors, to be secured upon the Estate, and by the Bond of the Purchaser and four Sureties; the* Fixtures *to be taken at a* Valuation; *and if Purchaser should die before the Conveyances are executed, the Surety agrees to become the Purchaser upon the same Terms.* FOR SALE OF MILL, &c. PARTLY IN CONSIDERATION OF ANNUITIES.

This agreement, made and entered into the day of , 18 ; Between [*vendor*], of, &c. and [*other vendor*], of, &c. sister of the said [*vendor*], of the one part, and [*purchaser*], of &c. and [*surety*], of, &c. of the other part. Parties.

Witnesseth, that the said [*vendors*] have sold unto the said [*purchaser*], and that the said [*purchaser*] hath purchased of the said [*vendors*], in fee simple, All that messuage, bakehouse, and premises, situate at aforesaid, and now in the occupation of, &c.; And also all those water grist mills, mill-house, and premises, situate at , in the parish of , in the said county of ; All which said last-mentioned premises are now in the occupation, &c. And the price agreed Testatum. Parcels. Price, a sum in gross, and two

FOR SALE OF MILL, &c. PARTLY IN CONSIDERATION OF ANNUITIES.

upon, for the purchase of the said premises, is the sum of hundred pounds, of lawful money of Great Britain [and Ireland]; *and* an annuity of pounds, of like lawful money, to be paid to the said [*vendor*] for his life; *and* another like annuity of pounds, to be paid to the said [*other vendor*], for her life: *Which* said sum of [*purchase money*] hundred pounds, is to be paid to the said [*vendor*] on or before the day of next, with interest, after the rate of five pounds per centum per annum, for the same, to commence from the day of next; *and* which said respective annuities are also to commence from the said day of next, and to be payable quarterly, clear of all deductions whatsoever, with a proportionate part of the last quarterly payment of each of the said respective annuities, up to and until the respective days of the deaths of the said [*vendor*] and [*other vendor*]: AND the said respective annuities are to be secured upon the said premises agreed to be purchased; and by the joint and several bonds of the said [*purchaser*] and [*surety*], [*and three other sureties*]: THE dough troughs, flour binns, and oven doors of the bakehouse, and the different machinery and utensils belonging to the mills only, are to be included in the purchase, as part of the freehold: AND *it is further agreed* that the said [*purchaser*] shall take, at a valuation to be made by and , both of, &c. (*auctioneers*); and if they should disagree in their valuation, then by a third person, to be chosen by the said [*valuers*], all the brewing utensils and barrels, and the beer therein; and also the grates throughout the house; and the several kinds of fuel; and likewise the three horses and cart, at the mill, and the hay-rick there; and all other the effects at the mill, belonging to the said [*vendor*]; the amount of which valuation is to be paid by the said [*purchaser*] to the said [*vendor*] within the space of (*ten*) days next after the same shall be ascertained, and the said [*purchaser*] shall have notice thereof; *and* which valuation is to be made within (*five*) days from the date hereof, if the said [*valuers*], or their umpire, can make the same within that time: AND *it is further agreed*, that the expenses of abstracts, and making out the title to the premises, and of

annuities for lives of vendors.

The sum in gross to be paid on a given day, with interest, to commence on the same day as the annuities.

Annuities to be secured on premises, and by bonds of vendor and his sureties.

Certain articles only, to be included as part of the freehold.

Purchaser to take at a valuation by two persons, or umpire, all brewing utensils, &c.

Valuation to be made within five days.

Expenses of abstracts, &c. and securing

FOR SALE OF MILL, &c. PARTLY IN CONSIDERATION OF ANNUITIES.

securing the aforesaid annuities, and of the said annuity bonds, and registering the several memorials thereof, as well as the expenses of and attending the completion of the conveyance of the said premises, and the bond for the hundred pounds, hereinafter mentioned, shall be paid and defrayed by and at the equal costs of the said [*vendor*] and the said [*purchaser*]; *But* the expense of a legacy receipt for the legacy to the said [*other vendor*], charged upon the said premises by her brother [A. B.'s] will, is to be paid by the said [*other vendor*] and [*vendor*], or one of them: *And* the said [*vendor*] is also to be at the charge of a fine, if one should be deemed necessary by counsel: AND *it is also agreed* by and between the said parties hereto, that the said [*purchaser*] shall enter upon the business of the (bakehouse and mill) on (*Monday*) next; *and* that the conveyance of the said premises, and the securities for the said annuities, shall be made and executed on or before the day of next; AND that the said [*purchaser*] and [*surety*] shall, upon the execution of the said conveyance, give their joint and several bond to the said [*vendor*], for the due payment of the said [*purchase money*] hundred pounds, and the interest thereof, on or before the said day of next: *In which* said bond, the said [*purchaser*] and [*surety*] do hereby promise and agree with the said [*vendor*], that the said [*three other sureties*] shall, at the same time, join with them the said [*purchaser*] and [*surety*]: AND ALSO that a sum not less than hundred pounds shall, at the costs of the said [*purchaser*], be always kept assured, in the names of the said [*purchaser*] and [*vendor*], upon the said messuage, bake-house, and premises, in aforesaid; *and* a sum not less than hundred pounds shall, at the like costs of the said [*purchaser*], be always kept assured in like manner upon the said water mills, house, and premises thereto belonging, in the parish of , aforesaid, in one of the fire-assurance offices in London, during the lives of the said [*vendor*] and [*other vendor*], and the survivor of them, to be applied in rebuilding or repairing the said respective premises, if all, or any part of them, should be burnt down or damaged by fire in the mean time: AND for the better

annuities, &c. to be paid equally by vendor and purchaser.

But the expense of receipt for legacy, charged on the estate, to be paid by vendors.

Expenses of a fine, if necessary, to be paid by vendor.

Purchaser to enter immediately, and conveyance, &c. to be made at a future period.

Upon execution of which, purchaser and surety to sign bond,

and procure three others to join as sureties.

A certain sum to be insured on premises.

Agreement by purchaser and his surety to fulfil contract.

FOR SALE OF MILL, &c. PARTLY IN CONSIDERATION OF ANNUITIES.

and more punctual performance of this agreement, on the part of the said [*purchaser*], they the said [*purchaser*] and [*surety*] do, and each of them doth hereby, for themselves and himself, their and his heirs, executors, and administrators, covenant and agree with the said [*vendors*], and each of them, their and each of their executors, administrators, and assigns, that they the said [*purchaser*] and [*surety*], or one of them, their or one of their executors, administrators, or assigns, shall and will well and truly pay, fulfil, and perform, such payments, conditions, and parts of the aforesaid agreement, which are or ought to be paid, done, and performed by and on the behalf of the said [*purchaser*], according to the true intent and meaning thereof: PROVIDED ALWAYS, that if the said [*purchaser*] should happen to die, before the said conveyance shall be made and executed, *Then* the said premises shall be conveyed to the said [*surety*], in fee simple, in the same manner, and under the same conditions, as by the former part of this agreement they are intended to be conveyed to the said [*purchaser*]: IN WITNESS whereof the said [*vendors*], and the said [*purchaser*], and [*surety*], have hereunto set their hands and seals, the said day of 18 .

If purchaser die before conveyance executed, then surety to complete purchase, &c.

FOR SALE IN FEE, PART OF THE MONEY SECURED BY MORTGAGE.

AGREEMENT *for Sale and Purchase of a* MANOR, FISHERY, &c. *in Fee (except a small part which is Leasehold) ; Part of the Purchase Money is to be paid, and the Remainder secured by the Bond of the Purchaser and a Mortgage of the Premises sold ; or by Assignment of a Mortgage of other Premises, if the Trustees of the Marriage Settlement of the Vendor should be enabled to accept that Security ; and Agreement by Purchaser that Persons to be entitled under an Intended Settlement of the Estate purchased, shall enter into a Bond for guaranteeing the regular Payment of the Interest, during the time they shall be in possession : and the Vendor covenants to make out Title, levy Fines, &c. and procure Act of Parliament, if necessary : with special Provisions as to Errors in Description.*

ARTICLES OF AGREEMENT indented, made, concluded, and fully agreed upon this day of 18 ; BETWEEN [*vendor*], of, &c. of the one part, and [*purchaser*], of, &c. of the other part. Parties.

FIRST, the said [*vendor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said [*purchaser*], his heirs and assigns, that he the said [*vendor*], or his heirs, and all other persons, having any estate or interest in the hereditaments hereinafter mentioned, shall and will, on or before the (*fifth*) day of (*April*) next, by such conveyances and assurances in the law, as counsel shall advise, well and effectually convey and assure, unto and to the use of the said [*purchaser*], his heirs and assigns, or to whom he or they shall direct or appoint, in fee simple (*except* as to Covenant by vendor to execute conveyances of premises before a certain day.

FOR SALE IN FEE, PART OF THE MONEY SECURED BY MORTGAGE.

the leasehold close hereinafter described), and free from all incumbrances whatsoever: ALL THAT the manor of , in the said county of , with the rights, royalties, members, and appurtenances thereto belonging; *And also* ALL THAT the right of fishery in the river , of and belonging to the said [*vendor*]; *And also* ALL and singular the messuages, &c.; *All* which said hereditaments and premises are freehold (save and except one close of land or ground, containing about acres, which is held by lease from, &c.), and contains in the whole acres, roods, and perches, or thereabouts; *Together* with all and singular the rights, members, and appurtenances thereto belonging, (*save and except* a certain small piece of waste ground adjoining to and on the west of the said river , near to the water mill in aforesaid, containing about roods): IN CONSIDERATION whereof, the said [*purchaser*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*vendor*], his heirs, executors, administrators, and assigns, that he the said [*purchaser*], his heirs, executors, or administrators, shall and will well and truly pay, or secure unto the said [*vendor*], his heirs, executors, administrators, or assigns, the sum of thousand hundred pounds, of lawful money of Great Britain [and Ireland], as and for the purchase of the manor, hereditaments, and premises before mentioned, in manner and form following; namely, that he the said [*purchaser*], his heirs, executors, or administrators, shall and will well and truly pay or cause to be paid unto the said [*vendor*], his heirs, executors, administrators, or assigns (*a*), the sum of thousand hundred pounds, in part thereof, on the said (*fifth*) day of (*April*) next, upon having such conveyances and assurances made and executed as aforesaid: AND that he the said [*purchaser*], his heirs, executors, administrators, or assigns, shall and will secure the further

Covenant by purchaser to pay, or secure purchase money, *viz.*

Part thereof upon execution of deeds, and secure the remainder by a mortgage of the premises sold.

PREMISES SOLD IN SETTLEMENT WITH POWER OF SALE, &c.

(*a*) If the premises sold be in settlement, with a power of sale, &c. say,

"or to the person or persons entitled to the receipt or payment of the said purchase money,"

sum of thousand pounds, the remainder of the said purchase money, with interest thereon from the said (*fifth*) day of (*April*), by the bond of the said [*purchaser*], and also by a mortgage of the said manor, hereditaments, and premises, unto the said [*vendor*] (*b*), either in fee or for years, as his counsel shall advise; and to be made payable on the (*tenth*) day of (*October*) next (*c*): AND *it*

FOR SALE IN FEE, PART OF THE MONEY SECURED BY MORTGAGE.

Part of purchase money to be secured on premises.

(*b*) If the premises sold are in settlement, &c. say, "or to his trustees,"

PREMISES SOLD IN SETTLEMENT.

(*c*) If the residue be to be secured by assigning a mortgage of other premises, and the premises sold be in settlement, say,

RESIDUE OF PURCHASE MONEY TO BE SECURED BY ASSIGNING A MORTGAGE OF OTHER PREMISES, if vendor or his trustees are enabled to accept same.

"by assigning unto the said [*vendor*], his executors, administrators, or assigns, (or to his trustees), by such ways and means as counsel shall advise, a mortgage of certain estates of and belonging to [*mortgagor*], of, &c. for securing the like sum of thousand pounds unto the said [*purchaser*], (or to his trustees); (*provided* the said [*vendor*], or his said trustees, are enabled to accept and take such assignment, as a security for the said sum of thousand pounds, part of the said purchase money, in obedience and conformity to the trusts of any existing settlement of the said manor, hereditaments, and premises, or otherwise): AND that he the said [*purchaser*], and the person and persons now in being, who shall be entitled to any estate in remainder of and in the said manor, hereditaments, and premises, under and by virtue of the conveyance to be made thereof, or the trusts of any intended settlement thereof, shall and will enter into a bond, with a sufficient penalty, unto the said [*vendor*], (or his said trustees), for securing and guaranteeing, during the time of their being respectively in possession of the said manor, hereditaments, and premises, the due and regular payment of the interest of the said sum of thousand pounds, at and after the rate of five pounds for one hundred pounds for a year, half yearly, during the continuance of the same sum on that security, unto the person or persons who shall from time to time be entitled to receive the same interest, by virtue of such assignment: (BUT in case the said [*vendor*], or his said

Purchaser, and those entitled under any settlement of the estate sold, to give a bond for securing payment of interest on mortgage.

If vendor, or his trustees,

FOR SALE IN FEE, PART OF THE MONEY SECURED BY MORTGAGE.

is hereby further covenanted and agreed, that the said [*purchaser*], his heirs or assigns, shall enter into possession, and to the receipt of the rents and profits of the said manor, hereditaments, and premises, upon and from the said (*fifth*) day of (*April*) next. AND *it is further covenanted and agreed*, that the said [*vendor*], his heirs, executors, or administrators, shall, at his or their own expense, make out a good and clear title to the said manor, hereditaments, and premises, and levy a fine, or suffer a recovery thereof if necessary, and also procure assignments of all such outstanding terms, or other incumbrances, as shall or may be subsisting upon the said manor, hereditaments, and premises; *And* in case an act of parliament should be necessary for perfecting the said title, THEN that the said [*vendor*], his heirs or assigns, shall use his and their utmost endeavours to procure the same, and bear and pay the whole expense thereof: AND that he the said [*purchaser*], his heirs or assigns, shall pay the expense of the conveyance of the said manor, hereditaments, and premises so to be made to him or them, as aforesaid (*d*). IN WITNESS, &c.

Purchaser to have possession and receive rents from a certain day.

Lastly, seller to make out title at his own expense; and levy fines, suffer recoveries, assign terms, and procure act of parliament if necessary.

Purchaser to pay for his conveyance.

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should not be enabled to accept assignment of mortgage as a security, purchaser to pay, or otherwise secure the same.

trustees, should not be so enabled or authorized to accept and take such assignment of the said mortgage, as a security for the said sum of thousand pounds, and interest, as aforesaid, *Then* he the said [*purchaser*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, the said sum of thousand pounds to the said [*vendor*], his heirs, executors, administrators, or assigns, or otherwise secure the same, to the approbation and satisfaction of the said [*vendor*], (or his said trustees)."

Trifling errors not to vacate contract.

(*d*) It may be added,

"AND *further*, that any trifling error or omission, respecting the quantity, or other description of the said premises, shall not vacate this agreement, but in such case an abatement shall be made out of the said purchase-money, or some other equivalent shall be given; and in case the said parties should disagree thereon, the same shall be referred to arbitration, or arbitration and umpirage."

FOR SALE IN FEE, PART OF THE MONEY SECURED BY MORTGAGE.

Where an estate is sold in one lot, either by private contract or public sale, and the vendor has not a title to the whole estate, he cannot enforce the contract at law (*Tomkins* v. *White*, 3 Smith, 435), unless perhaps a separate value was put on different parts of the estate, in which case the contract in favour of justice may be considered distinct. At law, neither can a vendor, on an entire contract, recover part of the purchase money, where he cannot make a title to the whole estate sold; nor would a purchaser be suffered in a court of law to say, that he would retain all of which the title was good, and vacate the contract as to the rest; such questions being subjects only for a court of equity. *Johnson* v. *Johnson*, 3 Bos. and Pull. 162.

At law a contract cannot be enforced *pro tanto*.

But if the part to which the seller has a title was the purchaser's principal object, or equally his object with the part to which a title cannot be made, and is itself an independent subject, and not likely to be injured by the other part, equity will compel the purchaser to take it, at a proportionate price. And in these cases it will be referred to the Master, to inquire, "whether the part to which a title cannot be made, is material to the possession and enjoyment of the rest of the estate." *M'Queen* v. *Farquhar*, 11 Ves. Jun. 467. *Knatchbull* v. *Grueber*, 1 Madd. Rep. 153. 3 Meriv. 137. S. C. *Scott* v. *Hanson*, 1 Sim. 13. *Lewin* v. *Guest*, 1 Russ. 325.] Sug. Vend. 249, 5th ed. [264, 7th ed.]

But in equity, a contract may be enforced *pro tanto*.

In the case of *Ker* v. *Clobery*, 26th March, 1814, Sug. Vend. 251, 5th ed. where the estate was sold before the Master, and the particulars stated, that "the whole of the above lands are only subject to a modus for tythe hay of 2*l*. per annum," Lord Eldon was of opinion, that a purchaser of an estate, stated to be tythe free, or subject to a modus, could not be compelled to take it with a compensation, if the estate is not tythe free. [See also *Binks* v. *Lord Rokeby*, 2 Swanst. 222, and the cases there referred to, and Sug. Vend. 268, 7th ed.]

Errors in description to avoid agreement.

But if it be the purchaser's object to acquire the whole of the estate; or a legal instead of a reputed manor, for the distinction as to which, see the note, *infra*, under APPOINTMENT OF GAMEKEEPERS; or to acquire a freehold estate;—or an estate situate in a particular place,—it may be proper to add,

"BUT NEVERTHELESS *it is hereby declared and agreed*, that if the said [*vendor*] should not be able to make a good title to the whole of the said premises, or the same should not contain acres; or in case the said manor should prove to be a manor by reputation only; or in case the said premises should prove not to be of freehold tenure; or in case the said premises should prove not to be situate in the said parish of ; Then the said [*purchaser*] shall be at liberty wholly to vacate this agreement."

SALE OF COPYHOLD OF INHERITANCE.

AGREEMENT *for the Sale of a* COPYHOLD *of Inheritance.*

Parties.

ARTICLES OF AGREEMENT made and entered into, the day of 18 , BETWEEN [*vendor*], of, &c. of the one part, and [*purchaser*], of, &c. of the other part;

Vendor contracts to sell.

WITNESS, that the said [*vendor*] hath contracted and agreed to sell to the said [*purchaser*] the inheritance in possession, according to the custom of the manor of

Parcels.

in the said county of , of and in ALL those customary or copyhold pieces or parcels of land, situate in the said manor, and now in the occupation of , and containing in the whole by estimation acres, be

Price.

the same more or less, AT or for the price or sum of

To make and deliver abstract.

pounds; AND that the said [*vendor*] shall and will within the space of (*one*) month from the date hereof, at his own expense, cause and procure to be made and delivered to the said [*purchaser*], his agent or attorney, a full, complete, and perfect abstract in the usual manner, of the title of him

To surrender.

the said [*vendor*] thereto: AND that he the said [*vendor*] and all other persons having any estate therein, shall on or before the day of next ensuing, in case the counsel of the said [*purchaser*] should be of opinion that the said [*vendor*] has a good title to the inheritance in possession in fee simple, according to the custom of the said manor of the said premises, duly surrender the same, according to the custom of the said manor, to the use of the said [*purchaser*], his heirs and assigns, or as he or they shall direct, to be holden at the will of the lord, according to the custom of the said manor, by the rents and services therefore due, and of right accustomed, but free from all

To execute covenant for title.

incumbrances whatsoever (*a*): AND that the said [*vendor*]

(*a*) The *free bench* of a widow, in case her husband die before he

and all other persons interested in the said premises, shall on or before the said day of execute the usual deed of covenants, on the sale of copyhold estates of inheritance, for the title, for quiet enjoyment, and for further assurance; (*b*) AND *it is hereby agreed*, that on such surrender being made, and such deed of covenants being executed, as aforesaid, the said [*purchaser*] shall pay to the said [*vendor*], the said sum of [*purchase-money*] pounds: AND that the said [*vendor*] shall deliver the possession of all the said premises to the said [*purchaser*] on the said day of next: AND that the said [*vendor*] shall not in the mean time cut down any trees, or commit any other waste upon the said premises, or grant any new leases thereof, without the privity and consent of the said [*purchaser*]. AND *it is further agreed*, that each of the said parties shall pay the fees and charges of his own counsel and solicitor, attending the examination of the said title; *And also* that the said [*purchaser*] shall pay the expenses of the said surrender, and all fees and fines upon the surrender to and admission of the said [*purchaser*] to the said premises (*c*), and that the said deed of

SALE OF COPYHOLD OF INHERITANCE.

Purchaser to pay consideration money.

Vendor not to fell trees, &c.

Each party to pay his own counsel and solicitor.

Purchaser to pay for surrender and his own admission, and deed of covenants.

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perfects a surrender, would be defeated in equity by his agreement for sale; because where a husband can by his surrender bar his wife of her free bench, any act done *for a valuable consideration* will be binding on her; and she is in that case compellable in equity to surrender her legal interest pursuant to such contract. *Hinton* v. *Hinton*, 2. Ves. sen. 631, 638. Ambl. 277. *Brown* v. *Raindle*, 3 Ves. 256.

(*b*) If the premises are subject to any incumbrances, *vide ante*, 83, 86.

(*c*) In the absence of any stipulation, if the vendor has not been previously admitted, the costs and charges in procuring his admission, in order to enable him to make a surrender to the purchaser, must be borne by the vendor; but the costs and charges of the surrender to be made by the vendor to the purchaser, and of the purchaser's admission, must be borne by the purchaser. *Drury* v. *Man*, 1 Atk. 96, Sanders's ed. So a covenant to surrender a copyhold to a purchaser, and to make and do all acts, deeds, &c. for the perfect surrendering and assuring the premises at the costs and charges of the vendor, is not broken by non-payment of the fine to the lord, on the admission of the purchaser; for the title is perfected by the admittance of the tenant; and the fine is

Incumbrances.

SALE OF COPYHOLD OF INHERITANCE.

covenants shall be prepared by and at the expense of the said [*purchaser*]; (*d*) AND for the due performance of the several agreements herein contained, on their respective parts, each of them the said parties bindeth himself, his heirs, executors, and administrators, unto the other of them, his executors, administrators, and assigns, in the sum of pounds, by way of liquidated damages for the non-performance of such agreements, and not by way of penalty. IN WITNESS whereof the said parties have hereto (*interchangeably*) set their hands the day and year first above written.

Liquidated damages.

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not due till after the admittance. *Graham* v. *Sime*, 1 East, 632. For the admittance is the cause of the fine; and if after admittance the tenant refuses to pay the fine, it is a forfeiture. *Hobart* v. *Hammond*, 4 Co. 28, a. *Fish* v. *Rogers*, 1 Roll. Abr. 506, (A) pl. 1, 507, (D) pl. 2. 6 Vin. Abr. 109, (A) pl. 1, 133, (P. c.) pl. 1. *Rex* v. The Lord of the Manor of *Hendon*, 2 Term Rep. 484. 1 Bac. Abr. 735, Gwil. ed. *Copyhold* (1) 2. 1 Watk. Cop. 263, 286. The 48 Geo. 3, c. 149, s. 34, authorises a steward of a manor, "previously to the acceptance of any surrender, or the granting or making of any admittance, voluntary grant, or license to demise in court, to demand and insist on the payment of his lawful fees for the same, and for the copy of court roll to be made out thereof, together with the stamp duty payable on such copy of Court Roll." But this clause does not extend to the fine, as it has been erroneously conceived.

Customary recovery to be at vendor's expense.

(*d*) "*but* the expenses of and attending any customary recovery which may be requisite, shall be paid and borne by the said [*vendor*]."

AGREEMENT *to charge an Annuity upon Lands, in consideration of Wife joining in a Sale of* COPYHOLD LANDS *settled on her for Life.*

TO GRANT WIFE ANNUITY FOR JOINING IN SELLING HER LIFE ESTATE IN COPYHOLDS.

AN AGREEMENT made the day of 18 , BETWEEN [*vendor*], of, &c. and his wife, of the one part, and [*trustee*], of, &c. of the other part.

Recital of settlement of copyhold estate on wife for life.

WHEREAS the copyhold or customary lands of the said [*vendor*], situate and being at in the county of , stand settled and assured, unto or in trust for the said [*wife*] for her life, to take effect upon his decease.

Recital that husband had contracted to sell settled estate and that his wife had agreed to join, in consideration of husband agreeing to settle other property on her.

AND WHEREAS the said [*vendor*] is desirous of selling and disposing of the said copyhold or customary lands; *and* hath actually entered into a contract for the sale thereof to [*purchaser*], of, &c. at or for the price or sum of pounds; *and* for the purpose of enabling the said [*vendor*] to complete the said contract, the said [*wife*] hath agreed to join with her said husband in the sale and conveyance of the same copyhold lands to the said [*purchaser*], upon condition that he the said [*vendor*] shall and do in lieu thereof, settle and secure unto, upon, or in trust for her the said [*wife*], for her life, to commence from his decease, the yearly sum of pounds, to be issuing out of his lands and real estates, at , in the county of .

Covenant to charge an estate with annuity for wife after husband's death.

NOW BE IT KNOWN, that the said [*vendor*] doth for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*trustee*], (a trustee nominated by and on behalf of the said [*wife*],) his executors and administrators, that if the said [*wife*] do and shall join in the sale and conveyance of the said copyhold or customary premises, to the said [*purchaser*], then and in such case he the said [*vendor*], or his heirs, shall and

TO GRANT WIFE ANNUITY FOR JOINING IN SELLING HER LIFE ESTATE IN COPYHOLDS.

will, at his and their own costs and charges in all things, within (*twenty days*) next after the making and executing such sale and conveyance, by such ways and means as the counsel of the said [*trustee*], his executors or administrators, shall advise, grant, limit, settle, and appoint, unto or in trust for the said [*wife*], an annuity or yearly sum of pounds, free from all taxes, charges, and deductions whatsoever, to be charged and chargeable upon, and issuing and payable out of, all the lands and real estates of him the said [*vendor*], situate and being in aforesaid, to commence and be computed from the day of the death of the said [*vendor*], and to continue payable to her during the term of her natural life, in lieu and stead of her estate for life in the said copyhold or customary estate, and in compensation for the same. IN WITNESS, &c.

AGREEMENT *for the Purchase of a* REMAINDER *or* REVERSION *in Fee.* (*a*)

FOR PURCHASE OF REVERSION.

ARTICLES OF AGREEMENT made and entered into the day of 18 ; BETWEEN Parties.

(*a*) Sales of *reversionary* interests are almost rendered impracticable, from an understanding, that dispositions of them by private contract will in general be set aside for the least inadequacy of price, and that proof of the full value lies upon the purchaser, *i. e.* he must prove that fact, without the vendor being required to shew the contrary. This however, as Mr. Roper observes, seems to be a mistake; for all, or the great majority of the cases, merely establish this doctrine in instances of *expectant* heirs, or of persons who may be considered to be adopted as such, from their relation to the family. 9 Ves. 246. 16 Ves. 512. 17 Ves. 20. 3 Ves. & Bea. 117.

The supposed rule, that expectant heirs, and persons standing in that relation, cannot dispose of their reversionary interests, unless the purchaser proves that he has given the full value, considered, and its inconvenience shewn.

The principle is public policy, in order to prevent deception upon parents and ancestors,—no parties to the transactions, and who, in ignorance of them, are induced to leave their properties to be divided among usurers and common adventurers, instead of their heirs, whom they intended to be beneficial inheritors and successors to their fortunes. But this exception of expectant heirs out of ordinary cases, appears to have been opposed by some learned judges; and it will be found, upon examining the authorities prior to *Peacock* and *Evans*, after referred to, that, whatever might have been the *dicta* of judges, the cases were decided, not upon inadequacy of value only, but upon gross frauds and impositions, which ought, and would have set aside any contracts. *Nott* v. *Hill*, and *Bill* v. *Price*, 1 Vern. 167, 467. *Barney* v. *Tyson*, 2 Ventr. 359. *Ardglasse* v. *Muschamp*, 1 Vern. 237. *Lamplugh* v. *Smith*, 2 Vern. 77. *Berny* v. *Pitt*, 2 Vern. 14, and *Twisleton* v. *Griffith*, 1 P. Wms. 310

In *Curwin* v. *Miller*, 3 P. Wms. 292, n. Lord King relieved the heir. That case is very shortly reported, and may have omitted to state many particulars. In *Chesterfield* v. *Jansson*, 1 Atk. 301, which was decided

FOR PURCHASE OF REVERSION.

upon the subsequent confirmation of the original transaction, Justice Burnet said, it might be too rigid to say that an heir should not borrow upon an expectancy, as some persons are so niggardly and sparing to their children, that a poor heir might starve in the *Desert*, with the land of *Canaan* in his view, if he could not relieve himself by borrowing upon an expectancy. But modern authorities, *Evans* v. *Cheshire*, Belt's Supp. to Ves. sen. 300. *Peacock* and *Evans*, 16 Ves. 512. *Gowland* v. *De Faria*, 17 Ves. 20. *Bowes* v. *Heapes*, 3 Ves. and Bea. 117, have established, that although an expectant heir may mortgage or sell his expectancy, yet if the full value be not obtained, the transaction shall be void. The consequence of this rule is, to exclude the fair and honest purchaser, who will not run such a risk, and to admit the usurer and rapacious money lender, who will incur it, but only upon the most exorbitant terms; so that the severity and *uncertainty* of the rule defeats its own end. Probably the more effectual principle would have been, to have established the contract of the heir in all cases where it would have been binding upon other persons, and to have relieved him when, and when only, *undue* advantage had been taken of his necessities, and a gross unconscionable bargain had been made with him. In *Hill* v. *Caillovel*, 1 Ves. sen. 122, which was the case of a son, aged twenty-four, who gave his bond for the payment of 520*l.* within six months after the death of his father, then of the age of seventy; Lord Hardwicke observed, that the circumstances were *suspicious*; but intimated, that he could not relieve against the transaction, *without proof* of *imposition*. Great inconvenience in practice, and much litigation, have arisen from the law being established as above: and it is considered impossible to recommend a purchaser to accept a title that depends upon so uncertain a calculation as the price being the full value of the reversion, which is left to the opinion of a judge in each particular case, and upon which it may frequently happen that any two or more persons may disagree. So that at present, Burnet's observation is realized, that the expectant heir must either starve in the sight of *Canaan*, or fall into the hands of rapacious money lenders; or have recourse to a sale by public auction, although not so productive as a *bonâ fide* sale by private contract. The inconvenience felt in this instance, from the uncertainty of the law, as applicable to each case, shows the propriety of all the rules of law being made clear, and followed in all cases to which they apply, until an alteration be made with the concurrence of all, or the majority of the proper judges. Experience has proved the truth of the proposition, that *misera servitus est ubi lex est vaga*; and it has been ascertained by the same unerring test, that there is less inconvenience in acting upon an unsatisfactory prin-

ciple, which has acquired the force of law by decisions, than when the private opinion or views of a single judge have induced him to set at nought the determinations of his predecessors, and the opinions of his cotemporaries, and to decide against them.

FOR PURCHASE OF REVERSION.

It is presumed, that the cases do not extend to instances where the persons entitled to remainders or reversions, are not the expectant heirs; or from their relation to the family, are not to be considered in the same character.

The above rule is confined to the case of expectant heirs, and persons standing in that relation.

Thus, in the case of *Gwynne* v. *Heaton*, 1 Bro. C. C. 6, Lord Thurlow said, that "a remainder-man might sell or give away his remainder, and the Court will not take it away from the purchaser or donee; that an inadequate consideration is *not alone* sufficient to vitiate the contract; although in order to do so, it must be inadequate. Where it is sold for a sum *grossly* inadequate, the Court has never suffered it to stand."

In *Batty* v. *Lloyd*, 1 Vern. 141, the defendant agreed with the plaintiff, entitled to an estate after the death of two old women, to give to her 350*l.* in consideration of being paid 700*l.* at the deaths of these two old women; and the plaintiff was to secure the 700*l.* upon a mortgage of her *reversionary* estate. The women died two years afterwards, and the suit was instituted to be relieved against the bargain; but the Court refused to interfere, observing that nothing ill appeared in the transaction.

And in *Cole* v. *Gibbons*, 3 P. Wms. 294. Lord Talbot took the distinction between young heirs and other persons.

Result of the cases.

The conclusion to be drawn from the old and new cases seems to be this: that the heir may sell or incumber his reversionary or expectant property by private contract, if the sale be for the full value, or if the incumbrance be made upon fair terms.

And probably it may be considered, that a stranger may sell his remainder or reversion for the best price which he can get, although it may be at an undervalue, if there be no fraud or imposition. The word "probably" is used in consequence of the general impression, that the reversionary interests of no persons can be sold by private contract, except at their utmost value. There are indeed numerous *dicta* in support of that impression, but no case has been found distinctly determined to that effect. The instance of an expectant heir was the first exception to a person's power of free disposition of his property upon the principle before stated. That principle was next extended to the more immediate members of the family, under the supposition, as it is conceived, of the reversionary interest being intended as a portion or provision, and therefore within the principle of

FOR PURCHASE OF REVERSION.

the expectant heir. Thus far the cases have advanced, and, it is conceived, no farther. When, therefore, the inconvenience of the exception which has been established is considered, and its insufficiency to answer the end of its formation, and the general sentiment in disfavour of it, it may not be considered as too speculative or rash to suppose, that when the question comes fairly before the Court, upon the validity of the sale of a reversionary interest belonging to a stranger, the contract will not be vitiated from mere inadequacy of consideration alone, and which would not avoid it in general instances. It appears above, that there is no want of authority for such a determination; the *dictum* of Lord Thurlow, and the decrees of Lord Hardwicke and Lord Keeper North, may be considered a sufficient foundation upon which to found such a decree. 1 Rop. Husband and Wife, 227; to which valuable work the reader is indebted for the above observations.

Bonâ fide sales of reversionary interests by public auction, are binding; and the purchaser is not bound to show he has given the full value.

Bonâ fide sales by expectant *heirs* of their reversionary interests, by *public auction*, are not avoidable, unless there be some fraud in the transaction. Thus in the case of *Shelly* v. *Nash*, 3 Madd. Rep. 232, the material facts of which, as they appeared on the pleadings, were, that the defendants, in consequence of an advertisement in the public papers of a sale, 4th March, 1814, by public auction, at Garraways, of a reversion of 8,000*l.* secured on freehold property, attended the sale, at which time printed particulars were distributed as follows: "The reversion of 8,000*l.* sterling, to be most amply secured upon valuable freehold property, and made payable at the decease of the survivor of two gentlemen; one (the grandfather of the plaintiff) between eighty and ninety, and the other, the father of the plaintiff, upwards of sixty years of age, in case they are both survived by a gentleman in his twenty-second year." The defendants were declared the highest bidders, at the sum of 2,593*l.* 10*s.* and paid a deposit of 519*l.* and signed an agreement for the purchase. The defendants, previously to the purchase, had no knowledge of the plaintiff, or his circumstances, nor even knew the name of the vendor, until they applied for an abstract of the title to the reversion on which the money was to be secured. On the 6th July, 1814, the purchase money was paid, and the securities executed. The grandfather of the plaintiff died 6th January, 1815.

The evidence of *Morgan*, the actuary of the Equitable Assurance Office, stated, that 3,540*l.* or thereabouts, was the fair value of the reversionary interest of 8,000*l.* on the before mentioned contingency; and that only 5,860*l.* ought to have been secured, to be paid upon the happening of the contingency, in consideration of the sum of 2,593*l.* 10*s.*

Frend, the actuary of the Rock Life Insurance Office, by his evidence, stated, that 3,653*l.* was the fair price of the contingency; but

FOR PURCHASE OF REVERSION.

that no one at the time (July 1814) would have advanced money on such conditions, as it was well known that a common mode of borrowing money was by securing to the lender 10*l.* per cent. on the money advanced, and an assurance on a life or lives, by which the capital was secured ultimately to the lender; and that in this way much money was advanced: but since the great change in the value of money, several such contracts have been dissolved, by the borrower procuring money at 7*l.* per cent. and an assurance on a life or lives. That had any person applied to him on the 12th July, 1814, to know what, upon the then mode of lending money, he should advance for 8,000*l.* to be received upon the aforesaid contingency, he should have answered, 2,561*l.* 10*s.* And if he (the deponent) had been further asked, what sum might be expected for the advance of 2,593*l.* 10*s.* at that time, he should have replied, 8,099*l.* But on the propriety of said last-mentioned terms, deponent does not presume to decide; but says, that *in contracts of the like nature, the contingency of a law suit must be taken into consideration.*

The object of the bill was to get the plaintiff released from the grant, on payment of the principal money advanced, and interest at 5*l.* per cent., it being a sale for an inadequate consideration of a reversion by an expectant heir, only twenty-two years of age, and in distress.

The defendant's counsel were stopped by Sir John Leach, the *Vice Chancellor*, who said—This is an important question; it has often occupied my attention; and so fixed are my sentiments on the subject, that it is unnecessary to delay the expression of my opinion.

At law, and in equity also, generally speaking, a man who has a power of disposition of his property, whether he sells to relieve his necessities or to provide for the convenience of his family, cannot avoid his contract upon the mere ground of inadequacy of price. A court of equity, however, will relieve expectant heirs and reversioners from disadvantageous bargains. In the earlier cases it was held necessary to show that undue advantage was actually taken of the situation of such persons; but in more modern times it has been considered, not only that those who were dealing for their expectations, but those who were dealing for vested reversions also, were so exposed to imposition and hard terms, and so much in the power of those with whom they contracted, that it was a fit rule of policy, to impose upon all who dealt with expectant heirs and reversioners, the *onus* of proving that they had paid a fair price, and otherwise to undo their bargains, and compel a re-conveyance of the property purchased. The principle and the policy of the rule may be both equally questionable. Sellers of reversions are not necessarily in the power of those with whom they contract, and are

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not necessarily exposed to imposition and hard terms; and persons who sell their expectations and reversions from the pressure of distress, are thrown by the rule into the hands of those who are likely to take advantage of their situation; for no person can securely deal with them. The principle of the rule, however, cannot be applied to sales of reversion by *auction*. There being no treaty between vendor and purchaser, there can be no opportunity for fraud or imposition on the part of the purchaser. The vendor is in no sense in the power of the purchaser. The sale by auction is evidence of the market price. Being of this opinion, it is unnecessary for me to enter into a consideration of the evidence, as to the inadequacy or adequacy of the price. It is said, that pretended sales by auction may be used to cover private bargains: where such cases occur they will operate nothing.—BILL DISMISSED WITH COSTS. [See also *Wood* v. *Abrey*, 3 Madd. 417, where the Vice-Chancellor held that the rule did not apply to a sale by a tenant for life and a remainder man. And see *Fox* v. *Wright*, 6 Madd. 111.]

Wherever, in these cases, the bargain is set aside, though for fraud, the defendant must be paid what was really lent to the plaintiff alone, and for his own proper use; and in some cases *interest* has been given, as in *Waller* v. *Dale*, Rep. Temp. Finch, 295, S. C. by the name of *Waller* v. *Dalt*, 1 Chan. Ca. 276. *Berny* v. *Pitt*, 3 P. Wms. 294 [D]. In others it has not, as in *Bill* v. *Price*, 1 Vern. 476. *Lamplugh* v. *Smith*, *Whitley* v. *Price*, 2 Vern. 77, 78. *Fairfax* v. *Trigg*, Rep. Temp. Finch, 314.

But if the vendor, with full notice of all the circumstances, and of his right to set aside the contract, confirm the sale after the event has happened, or he becomes entitled in possession, equity will not relieve against the sale, although the aid of the court could not originally have been withheld. *Cole* v. *Gibbons*, 3 P. Wms. 290. *Chesterfield* v. *Janssen*, 1 Atk. 301. *Hylton* v. *Hylton*, 2 Ves. sen. 549. *Stephens* v. *Bateman*, 1 Bro. C. C. 22. *Crowe* v. *Ballard*, 3 Bro. C. C. 117. 1 Ves. jun. 215. 2 Cox, 253. *Morse* v. *Royal*, 12 Ves. 355. *Murray* v. *Palmer*, 2 Scho. and Lef. 486. *Roche* v. *O'Brian*, 1 Ball and Bea. 339. *Dunbar* v. *Tredennick*, 2 Ball and Bea. 317. [*Maskeen* v. *Cole*, cit. 2 Madd. 421.]

It should be observed, that the principle on which courts of equity proceed, does not extend to those cases in which the remainder-man joins in the sale with those who have estates in possession. *Wood* v. *Abrey*, Vice Ch. Mich. Term, 1818, cited 1 Fonbl. Treat. Equity, 135. (*k*) 5th ed. [6 Mad. 417.] See further, on the subject of this note, 13 Vin. Abr. 546. *Fraud* (D. a.) 1 Equ. Ca. Abr. 90. (G) Gilb. Ch. 291, ed. 1758. 2 Wooddeson's Vinerian Lectures, 460. 2 Pow. Contr. 181. 1 Madd.

[*vendor*], of, &c. of the one part, and [*purchaser*], of, &c. of the other part. FOR PURCHASE OF REVERSION.

THE said [*vendor*] doth hereby agree with the said [*purchaser*], to sell to him the remainder or reversion in fee of him the said [*vendor*], expectant upon, and to take effect in possession immediately after the determination of the estate for life of [*tenant for life*], of, &c. of and in ALL THOSE messuages or tenements and premises, situate at in the county of , and now in the occupation of, and containing &c. with their appurtenances, free from all incumbrances, at or for the price or sum of pounds: *and* that he the said [*vendor*] shall within (*one*) month from the date hereof, at his own expense, make and deliver to the said [*purchaser*], his agent or solicitor, an abstract of the title of him the said [*vendor*], to the said messuages or tenements and premises: *and also* that the said [*vendor*], or his heirs, and all other necessary parties, shall and will, on or before the day of next, on receiving from the said [*purchaser*], his executors or administrators, the said sum of pounds, at the costs and charges of the said [*purchaser*], his heirs, executors, administrators, or assigns, execute a proper conveyance for conveying and assuring the said remainder or reversion in fee, expectant upon the determination of the estate for life of the said [*tenant for life*], of and in all the said messuages or tenements, and premises, with their appurtenances, unto the said [*purchaser*], his heirs and assigns, or otherwise as he or they shall direct, free from all incumbrances; AND THE SAID [*purchaser*] hereby agrees with the said [*vendor*], that he the said [*purchaser*], his heirs, executors, administrators, or assigns, shall and will, on the execution of such conveyance as aforesaid, pay the said sum of pounds unto the said [*vendor*], his ex-

Vendor agrees to sell.

Parcels.

To make and deliver abstract.

All necessary parties to execute conveyance.

Purchaser agrees to pay consideration money.

Ch. 117, 2d ed. Fonbl. Treat. Equity, 135, 5th ed. Bk. 1 ch. 2. s. 12. (*k*). Sug. Vend. 229, 5th ed. [*Bernal* v. *Donegal*, 3 Dow. 133.]

FOR PURCHASE OF REVERSION.

Conveyances to be at purchaser's expense; but to be settled by parties' respective counsel.

Each party to pay his own counsel and solicitor.

Time, the essence of the contract.

ecutors or administrators. AND *it is further* agreed, by and between the said parties, that the said conveyance shall be prepared by and at the expense of the said [*purchaser*]; *and* that the same shall be settled and approved, on the parts of the said [*vendor*] and [*purchaser*], by their respective counsel or solicitors; *and* that each of the said parties shall pay the fees of his own counsel, and the charges of his own solicitor; *and* that if the said conveyance and assurance should not be executed before the said day of , then this agreement shall be wholly void to all intents and purposes whatsoever, and the jurisdiction of equity wholly barred (*a*); it being the true intent and meaning of the said parties, that in such event, execution of this agreement shall not be enforced by any court of equity, notwithstanding any rule, if such rule there be, that time cannot be made the essence of a contract, or any other rule or maxim whatsoever; and that the death of the said [*tenant for life*] before the said day of

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Time, the essence of the contract in sales of reversionary interests.

(*a*) A similar provision to the above should never be omitted, unless the agreement of the parties be otherwise; although in the absence of any express stipulation, if on an agreement for the sale of a reversionary estate, part of the terms is, that the purchase money shall be paid by a certain time; if it be not so paid, by default of the purchaser, the vendor is discharged from his contract; because it is of the essence of justice that such a contract should be executed immediately, and without any delay; as no man sells a reversion who is not distressed for money; and it is ridiculous to talk of making him a compensation by giving him interest on the purchase money during the delay. *Newman* v. *Rogers*, 4 Bro. C. C. 393. So specific performance was refused on the laches and trifling conduct of the plaintiff, the contract being for a sale to the plaintiff under a bankruptcy of a reversionary interest for life, which, in the interval, fell into possession; and the defendants having also been in some degree remiss, the bill was dismissed without costs, upon delivering up the agreement. *Spurrier* v. *Hancock*, 4 Ves. 667. But if the purchaser of a reversion objects, on account of a want of title, and continues treating after the time is elapsed when a good title was to be made, and the purchase completed, and the title is afterwards made good, he will be held to a specific performance. *Britton* v. *Twining*, before V. C. Leach, 30th June, 1818, 1 Madd. Ch. 417, 2nd ed. [See 79, n. (c)]

next, shall not in any wise affect this agreement. (*b*) IN WITNESS, &c. FOR PURCHASE OF REVERSION.

(*b*) Add clause for liquidated damages, if it be the agreement, *ut ante*, 148. Liquidated damages.

AGREEMENT *for the Purchase of an Estate for the* LIFE *of the Vendor; or for the Life of another Person or Persons.* (*a*) FOR PURCHASE OF ESTATE FOR LIFE, OR POUR AUTRE VIE.

ARTICLES OF AGREEMENT made and entered into the day of 18 ; BETWEEN Parties.

(*a*) The having issue is not an essential preliminary to the power of alienation in the case of an estate *pour autre vie*, limited to one and the heirs of his body, as it is in the case of a conditional fee at common law, Hargr. n. Co. Litt. 19. a. (4); from which the mode of barring by alienation was evidently borrowed, Hargr. n. Co. Litt. 20. a (5.) 2 Gwill. Bac. Abr. 543. Estates *pour autre vie*, not being entailable within the statute *de donis conditionalibus*, 13 Ed. 1. c. 1. such persons as have interests in them in the nature of estates tail may bar their issue and all remainders over, by *alienation* of the estate *pour autre vie*, in the same manner as those who are strictly speaking tenants in tail may do, by *fine* and *recovery*; such as a conveyance by the *quasi* tenant in tail, by lease and release; or surrender to the immediate remainder-man or reversioner, although it be only to renew the lease, and although the surrender be made without the concurrence of the trustees of the legal estate, or even by articles of agreement, either to sell or settle the estate. *Low* v. *Burron*, 3 P. Wms. 262. 2 Eq. Ca. Abr. 394, pl. 1. *Baker* v. *Bayley*, 2 Vern. 225. *Norton* v. *Frecker*, 1 Atk. 524. *Wasteneys* v. *Chappel*, 1 Bro. Par. Cas. 457. *Forster* v. *Forster*, 2 Atk. 259. *Grey* v. *Mannock*, 2 Eden, 339, cited 6 T. R. 292. *Blake* v. *Blake*, 3 P. Wms. 10, (1). 1 Cox, 266. *Moody* v. *Walters*, 16 Ves. 313. *Blake* v. *Luxton*, Coop. 178. *Mogg* v. *Mogg*, 1 Meriv. 690. But not by devise, according to the better opinion. *Saltern* v. *Saltern*, 2 Atk. 376. *Campbell* v. *Sandys*, 1 Sch. and Lef. 281; contra *Doe*, ex. dem. *Blake* v. *Luxton*, 6 T. R. 289. Though when a married woman has a freehold A fine or recovery not necessary to bar a *quasi* entail of an estate *pour autre vie*.

FOR PURCHASE OF ESTATE FOR LIFE, OR POUR AUTRE VIE.

[*vendor*], of, &c. of the one part, and [*purchaser*], of, &c. of the other part.

Agreement by vendor to sell premises.

FIRST the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, agree to sell to the said [*purchaser*] the (*b*) life estate of him the said [*vendor*], in ALL THAT messuage or tenement, and premises, with the appurtenances, situate, &c. for the sum of

To make and deliver abstract.

pounds; (*c*) *And also*, at his own costs, to make and deliver unto the said [*purchaser*], or his solicitor, a full, complete, and perfect abstract of the title to the freehold and inheritance of the said premises; *And* if the counsel of the said [*purchaser*] should be of opinion, (*d*) that the said [*vendor*] has a good title to an estate for his life in the

If title good, to make conveyance,

said premises, Then that he the said [*vendor*] and all other necessary parties shall, on or before the day of now next, by good and sufficient conveyances and assurances in the law, and with the usual and other proper covenants for the title, for quiet enjoyment, and for further assurance, convey and assure, unto the said [*purchaser*], his heirs and assigns, or as he or they shall direct, the

with usual covenants.

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in an estate *pour autre vie*, either absolutely or *quasi* in tail, a fine is necessary. *Duke of Grafton* v. *Hanmer*, 3 P. Wms. 266, note. Perk. s. 613. Hargr. n. Co. Litt. 121. a. 2 Bl. Com. 355. 5 Cru. Dig. 200. Wms. n. 2 Saund. 175. f. (3). Gilb. Uses, 40, 244. Ritso's Introduction to the Science of the Law, 204. Noy's Maxims, 69, 9th ed.

ESTATE FOR OTHER LIVES.

(*b*) If the estate be held for the lives of other persons, say, "the estate of him the said [*vendor*] for the lives of [*nominees*], granted and demised by indenture, bearing date on or about the day of 18 , and made between [*lessor*], of, &c. of the one part, and the said [*vendor*], of the other part, and afterwards perfected by livery of seisin, of and in ALL THAT, &c."

LEASEHOLD.

Vendor not to produce title to the inheritance.

(*c*) If it be the agreement, instead of the succeeding clause, say, "*but* the said [*vendor*] shall not be required to produce any further evidence of the title to the said premises, than the said lease from the said [*lessor*] to the said [*lessee*], (and a conveyance thereof from [*lessee*] to [*vendor*]);"

(*d*) *Vide ante*, 81. (*a*)

said messuage or tenement, and premises, for the (*e*) life of the said [*vendor*], free from all incumbrances; (*f*) *And* at the same time, deliver unto the said [*purchaser*] all the title deeds and writings in the possession or power of the said [*vendor*], relating to the said premises (*g*). AND THE SAID [*purchaser*] hereby agrees for himself, his heirs, executors, and administrators, that he the said [*purchaser*] shall and will, on the execution of the said conveyance, pay

FOR PURCHASE OF ESTATE FOR LIFE, OR POUR AUTRE VIE.

And deliver title deeds.

Agreement by purchaser to pay consideration money.

(*e*) "for the lives of the said [*nominees*], and the (survivors and) survivor of them,"

ESTATE POUR AUTRE VIE.

(*f*) If held by lease, say,

LEASEHOLD.

"But subject to the rent, covenants, conditions, and agreements, reserved and contained in the said indenture of lease;"

Subject to rents and covenants.

(*g*) Although every person having a freehold interest, under a settlement or will, has *prima facie* a right to the custody of the title deeds in order to defend the possession; yet Lord Hardwicke has said, it was the common practice for the Court of Chancery to direct the title deeds to be taken from the tenant for life, and deposited in court, for the security of a remainder-man, whose interest was expectant on a mere tenancy for life; but more especially if the first tenant for life were the heir at law, as he might destroy the deeds in order to better his estate. *Ivie* v. *Ivie*, 1 Atk. 431. *Smith* v. *Cooke*, 3 Atk. 382. *Saithby* v. *Stonehouse*, 2 Ves. sen. 617. But on a motion that the deeds might be kept in court for safe custody, Lord Northington refused the motion; observing that it was his opinion, that the tenant for life should have the possession of the deeds, except when brought into court, under an order of court for safe custody. *Webb* v. *Lord Lymington*, 1 Eden, 9. *Webb* v. *Webb*, 1 Dick, 298. 8 Ves. 322. See also *Lord Lempster* v. *Lord Pomfret*, Ambl. 154. And in *Hicks* v. *Hicks*, Dick. 650, it is laid down, that when the title deeds are in the hands of the tenant for life, the Court of Chancery will not take them from him; but when they are not in his hands, the Court will not order them to be delivered to him. In *Ford* v. *Paring*, 1 Ves. jun. 78, it was said, that where the tenant for life was satisfied, and did not care about the deeds, but the remainder-man was not satisfied, the court would take care of the deeds, and not leave them in the hands of third persons who have no right to them, to the prejudice of the remainder-man. And in *Duncombe* v. *Mayer*, 8 Ves. 320, Lord Eldon directed the title deeds of an estate to be delivered out of court, upon the application of trustees and tenant for life, founded

The tenant of the immediate freehold has generally a right to the title deeds.

FOR PURCHASE OF ESTATE FOR LIFE, OR POUR AUTRE VIE.

the sum of pounds, unto the said [*vendor*] (*h*). AND *it is hereby further agreed*, that the said conveyance shall be prepared by and at the expense of the said [*purchaser*]; AND that the same conveyance shall be settled and approved on the parts of the said [*vendor*], and [*purchaser*], by their respective counsel or solicitors; AND that each of the said parties shall pay the fees of his own counsel, and the charges of his own solicitor; AND that all rates, taxes, and outgoings, payable for or in respect of the said premises, to the day of , shall be paid by the said [*vendor*], from which time the said [*purchaser*] shall be let into possession of the said premises: (*add clause, time to be the essence of the contract*, ut ante, 158.) AND that the death of the said (*i*) [*vendor*] before the said day of next, shall not in any wise affect this agreement (*k*). IN WITNESS, &c.

Conveyance to be at purchaser's expense.

And each party to pay his own counsel and solicitor.

Rates, &c. to be paid by vendor, till possession delivered to purchaser.

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on the above mentioned authority of Lord Northington. See also *Strode* v. *Blackburne*, 3 Ves. 225. *Bowles* v. *Stewart*, 1 Scho. and Lefr. 209. 1 Cru. Dig. 121, 2d ed.

But equity will oblige tenant for life to deliver deeds to the heir, he confirming the life estate; yet if there are any *mesne* remainders in tail, as long as there is a possibility of issue, the court will not order them to be taken out of the hands of the tenant for life. *Joy* v. *Joy*, 2 Eq. Ca. Abr. 284. pl. 4. [See *Jones* v. *Jones*, 3 Mer. 172.]

So also where the plaintiff claims as heir at law to a person who made a jointure, and there is no appearance of any settlement, the court will oblige a production of the deed; *Senhouse* v. *Earl*, 2 Ves. sen. 450. but unless the plaintiff offer to confirm the jointure, the settlement may be pleaded in bar: *Chamberlain* v. *Knapp*, 1 Atk. 52. but the jointress must state the date of her jointure deed; and whether executed at the time it bears date; and what premises are therein comprised; however, she is not obliged to discover upon the offer to confirm, but may wait till the confirmation be made. *Leech* v. *Trollop*, Ves. sen. 661. *Ford* v. *Peering*, 1 Ves. jun. 76.

LEASEHOLD FOR LIVES.

(*h*) *Add clause to pay the rent and perform the covenants*, ut post, 167.

ESTATE FOR OTHER LIVES.

(*i*) "[*nominees*], any or either of them, before, &c."

(*k*) In *White* v. *Nutt*, 1 P. Wms. 61. 2 Eq. Ca. Abr. 687. pl. 3. the purchaser, by articles reciting that he had an estate for two lives in a church lease, covenanted to convey his title to the premises by a certain day to the purchaser, as he or his counsel should advise; after the

articles, and *before the time appointed for the conveyance,* one of the lives dropped; and the question being upon whom the loss should fall? —It was decreed by Lord Keeper Wright,—that in regard here was no default in the vendor in making the conveyance, the loss of the life ought to be borne by the purchaser, in the same manner as if the reversioner had articled to sell the reversion expectant upon two lives, and one of them had died before the conveyance, the purchaser should there have had the benefit of it; and in each case, *in equity, the estate is as conveyed from the time of the articles.* But his lordship seemed to think, that if *all* the lives had dropped before the execution of the conveyance, it might have been another consideration, for that the money was to be paid upon the conveyance, and no estate being left, there could be no conveyance. The reporter adds, *quære tamen* the reason of this distinction between the loss of part and of the whole, *et vide Cass* v. *Rudell,* 2 Vern. 280; but that case is misreported, see Raithby's edition of Vernon, and *Mortimer* v. *Capper,* 1 Bro. C. C. 157. n. However, his lordship's doubt cannot be supported, as it is contrary to the principle of that part of his judgment in italics; and in a late case, where a contract was made for the purchase of some houses which were burned down before the conveyance, the loss was holden to fall upon the purchaser, although the houses were insured at the time of the agreement for sale, and the vendor permitted the insurance to expire, without giving notice to the purchaser; Lord Eldon being of opinion, that no solid objection could be founded on the mere effect of the accident: because, as the party by the contract became in equity the owner of the premises, they were his to all intents and purposes. *Paine* v. *Meller,* 6 Ves. 349. But where a similar accident happened to an estate sold before a master, and the report had only been confirmed *nisi,* the loss was holden to fall on the vendor, because a purchase before the master is not complete before confirmation of the report; and the circumstance that the sale had been delayed by the purchaser having opened the biddings, was not attended to. *Ex parte Minor,* 11 Ves. 559. [13 Ves. J. 518. 1 Jac. and Walk, 639. *Mackrell* v. *Hunt,* cit. 2 Madd. 34, n.] See also *Pope* v. *Roots,* 7 Bro. Par. Ca. 184. *Poole* v. *Shergold,* 2 Bro. C. C. 118. *Revel* v. *Hussey,* 2 Ball and Bea. 280. *Wyvill* v. *The Bishop of Exeter,* 1 Price, 295. *Harford* v. *Parrier,* 1 Madd. Rep. 532. *Akhurst* v. *Jackson,* 1 Swanst. 85. Sug. Vend. 235. 5th ed. [251. 7th edit.] 1 Madd. Ch. 367. 2d ed. 1 Fonbl. Treat. Equity, 133, 370. 5th ed. [*Zagwey* v. *Furnell,* 2 Camp. 240. *Spurrier* v. *Hancock,* 4 Ves. J. 667. *Adand* v. *Gaisford,* 2 Madd. 28.]

PURCHASE OF LEASEHOLD.

AGREEMENT *for the Purchase of the Whole*, or *a Part only, of a* LEASEHOLD *Estate; with or without the* LICENSE *of the Lessor.*

Parties.

ARTICLES OF AGREEMENT made this day of 18 ; BETWEEN [*vendor*], of, &c. for himself, his heirs, executors, (*a*) and administrators, of the one part, and [*purchaser*], of, &c. for himself, his heirs, executors, and administrators, of the other part.

Vendor agrees to sell.

FIRST, the said [*vendor*], in consideration of the sum of pounds, agrees to sell to the said [*purchaser*],

Premises.

ALL THAT messuage or tenement, garden, and premises, situate at in the county of , (*b*) for the remainder of a term of years, (*c*) from the

Reference to lease.

day of 17 , granted by an indenture bearing date on or about the day of 17 , and made between [*lessor*], of the one part, and [*lessee*], of the other part, SUBJECT to the (*d*) rent, covenants, and agree-

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(*a*) The executors and administrators need not be named, *vide ante*, 42. (*b*).

PART ONLY.

(*b*) If part only of the premises are sold, add,

"being part of the premises held by the said [*vendor*],"

DETERMINABLE ON LIVES.

(*c*) If the lease be for years determinable on lives, say,

"for the remainder of a term of (*ninety-nine*) years, if [*nominees*] should so long live, granted, &c."

PART ONLY.

(*d*) If part only of the premises are sold, say,

Subject to apportioned rent, and covenants for parts sold.

"apportioned rent of pounds, and to the covenants and agreements therein reserved and contained, on the part of the lessee to be paid and performed, so far as the same relate to and concern the messuage or tenement, garden, and premises, hereby agreed to be sold."

ments therein reserved and contained, on the part of the lessee to be paid and performed: AND ALSO shall and will, within one month from the date hereof, at his own costs, procure and deliver unto the said [*purchaser*], an abstract of (*e*) the said indenture of lease, (and all subsequent deeds, evidences, and writings, relating thereto,) but not of any previous deeds or writings whatever. AND ALSO shall and will, on or before the day of next, on receiving the said purchase-money, with all other requisite and necessary parties, and such persons as shall be interested in the purchase-money (*f*), by a good and

PURCHASE OF LEASEHOLD.

Vendor to deliver abstract;

to execute assignment;

(*e*) If the agreement be that the vendor shall produce the lessor's title, say,

To produce lessor's title.

"of the title of the said [*lessor*], and also of the said indenture of lease, (and all subsequent deeds, evidences, and writings, relating thereto);"

And if the agreement be for the purchase of an underlease, say,

UNDERLEASE.

"of the title of the original and all subsequent lessors, and also of the said indenture of lease, (and all subsequent deeds, evidences, and writings, relating thereto)."

To produce original and subsequent lessor's title.

If the purchaser of a leasehold interest be not precluded by the contract, he should generally require the production of the title of the person who granted the lease; and if it be an underlease, the title of the original, and all underlessors: in the latter case, *each* lease should be carefully inspected by the solicitor for the purchaser, to ascertain whether there are any covenants, the breach of which would cause the assignee to be evicted by a superior landlord, without any default on the assignee's part. Noy's Maxims, 157, 9th ed. [See *supra*, p. 46].

Purchaser should require production of lessor's title.

The observations *ante*, 46, equally apply to the *purchase* of a leasehold interest.

(*f*) If the consent of the lessor be necessary, say,

Vendor to procure license to assign.

"and with the license and consent of the lessor, to be procured by and at the expense of the said [*vendor*], and"

On an agreement for assigning a lease, in which there is a clause against assignment without the landlord's consent, the vendor is bound to procure such consent, *Lloyd* v. *Crispe*, 5 Taunt 249; and on an action for damages against the purchaser, for non-performance of the agreement, it is incumbent on the vendor of such a lease to prove that

The vendor is bound to procure the lessor's consent, when necessary.

PURCHASE OF LEASEHOLD.

sufficient assignment, or other assurance, and with the usual and other proper covenants, assign or otherwise assure the said messuage or tenement, garden, and premises, with the appurtenances, unto the said [*purchaser*], or as he shall appoint, for the residue of the said term, free from all incumbrances: AND ALSO shall and will pay and discharge all rent, taxes, rates, assessments, and other outgoings for the said premises, up to the said day of

To pay rent, &c. to a given day.

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he has obtained the lessor's consent to the assignment. *Mason* v. *Corder*, 7 Taunt. 9. 2 Marsh. 332.

There is a wide difference between the purchase of the residue of a term under a lease, which contains a condition against alienation without license, accompanied with a license for the assignment, and a new lease for the like term, containing a similar condition: for according to *Dumpor's* case, 4 Co. 119. the condition not to alienate is, by the license, gone for ever; and therefore a purchaser might well refuse to accept in lieu of the residue of an old term, a new lease, subject to such a condition: an assignee, too, has a right to get rid of his responsibility, by assigning over, when he has not given a covenant or bond for payment of the rent and performance of the covenants; and therefore, the value of the residue of a term differs in that quality also from a new lease. *Mason* v. *Corder*, 7 Taunt. 12. This reasoning equally applies to an assignment with the lessor's consent, and the purchaser being thereupon required to execute a defeazance reviving the condition of the lease, and covenanting with the lessor to pay the rent, and perform the covenants reserved and contained in the lease, which is sometimes required, *ut post*, 168. See the form, with a note on this subject, *infra*, in ASSIGNMENT *on purchases*.

Equity will not decree an underlease on an agreement to assign.

So equity will not decree an underlease on an agreement to assign, though it appear that the assignment cannot be made without a forfeiture; for the defendant in agreeing to assign, might intend to discharge himself from covenants, to which he would continue liable by the underlease. *Anon.* E. T. 1790. 1 Fonbl. Treat. Equity, 223, (*v*), 5th ed. This case is but shortly stated, and it must have been rather an extraordinary lease; if it contained a restriction against assignment without license, and yet did not contain covenants for payment of the rent, &c. A similar case is not likely to occur; because, in every lease properly drawn, the lessee covenants for payment of the rent, and performance of the covenants; in which case, whether he assigns, or underlets, and even although the lessor should consent to assignment, or accept the assignee as tenant, yet the lessee and his representatives would continue liable, under the covenants in the lease, to the payment of the

Lessee under the covenants, continues liable after assignment.

next (*g*). AND THE SAID [*purchaser*] hereby agrees to pay the said purchase-money, upon or at the execution of the said conveyance: AND ALSO shall and will, in the conveyance to him, if required, covenant thenceforth to pay the (*h*) rent, and perform the covenants, re-

PURCHASE OF LEASEHOLD.

Purchaser agrees to pay consideration money.

And to pay the rent and perform the covenants.

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rent and performance of the covenants; and their only remedy would be against the assignee, under the covenant or bond for payment of the rent, &c. and for indemnity, usually required on an assignment. [See the dissertation on Leases, Vol. IV. 364, *et seq.*]

(*g*) If part only of the premises are sold, say,

PART ONLY.

"AND ALSO, shall and will, in the conveyance to the said [*purchaser*], covenant thenceforth to pay the remainder of the said rent, and observe the covenants and agreements reserved and contained on the part of the lessee to be paid and performed, so far as the same relate to, and concern, the premises retained by the said vendor, and indemnify the said [*purchaser*] therefrom. AND *it is hereby agreed*, that in the said conveyance, there shall be contained cross powers of distress on the premises sold or retained, for the recovery of such part of the said apportioned rent as either of the said parties shall pay, in consequence of the default of the other of them, and also for the costs and expenses attending the same: AND FURTHER, that the said [*vendor*] shall, at his own costs, deliver unto the said [*purchaser*], true and attested copies of the said indenture of lease, (and all subsequent deeds, evidences, and writings, relating thereto): *and*, in the conveyance to the said [*purchaser*], covenant in the usual manner to produce the same when required, and to deliver other copies thereof, from time to time, at the request, costs, and charges of the said [*purchaser*]."

Vendor to covenant to pay rent and perform covevants for part retained, and indemnify purchaser therefrom.

Assignment to contain cross powers of distress.

Vendor to deliver attested copies of lease, &c.

and to covenant for their production, and to let purchaser have other copies.

For the form of a conveyance with these special provisions, see ASSIGNMENT *on purchases.*

(*h*) If part only of the premises are sold, say,

PART ONLY.

"said apportioned rent of pounds, and observe the covenants and agreements reserved and contained on the part of the lessee to be paid and performed, so far as the same relate to, and concern, the messuage or tenement, garden, and premises, hereby agreed to be sold, and indemnify, &c." *as above.*

To pay apportioned rent and perform covenants for parts sold.

PURCHASE OF LEASEHOLD.

Assignment to be at purchaser's expense. Purchaser to execute counterpart, &c. at vendor's expense.

served and contained in the said indenture of lease, and indemnify the said [*vendor*] therefrom; which said conveyance is to be prepared by and at the costs of the said [*purchaser*]: (*i*) AND ALSO shall and will, if required, execute a counterpart of the said conveyance, or a deed of covenant, or a bond in a sufficient penalty, for payment and performance of the said rent and covenants, the same counterpart, covenant, or bond, being prepared by, and at the costs of the said [*vendor*]. (*k*) *(Add clauses, time to be the essence of the contract, and for liquidated damages,* ut ante, 158, 148). IN WITNESS, &c.

Purchaser to execute defeazance, reviving condition.

(*i*) If the consent of the lessor be necessary, and if it be the agreement, say,

"AND ALSO shall and will, after such assignment, if required by the lessor, execute a defeazance, reviving the condition contained in the said lease, (*) and thereby covenant with the lessor, to pay the rent, and perform the covenants reserved and contained in the same lease, for the residue of the said term, and which deed shall be prepared by the solicitor of the lessor, at the costs and charges of the said [*purchaser*]:"

See note (*f*), *ante*, 165.

Fixtures, &c. to be taken at a valuation.

(*k*) If the fixtures, or any articles of furniture, &c. are to be taken at a valuation, see FORM, *ante*, 138.

PART ONLY.

Purchaser to execute defeazance reviving condition for the part sold.

(*) If part only of the premises are sold, say,

"so far as concerns the messuage or tenement, garden, and premises, hereby agreed to be sold, and thereby covenant with the lessor, to pay the said apportioned rent of pounds, and to perform the covenants reserved and contained in the same lease, for the residue of the said term, so far as relates to the premises hereby agreed to be sold, and which deed, &c." *as above.*

But in such case, it would perhaps be better for the vendor to take a new lease, for the residue of the term of the part retained, and for the purchaser also to take a new lease, for the residue of the term of the part sold, which would save the expense of the defeazance and shorten the assignment, and also prevent the necessity and inconvenience of cross powers of distress to the vendor and purchaser, for recovery of the apportioned rent, in case either of them should by the neglect of the other be distrained on, or otherwise obliged to pay it.

AGREEMENT *for the Purchase of a* LEASEHOLD *House, and the Utensils, and Good-will of a Business.*

PURCHASE OF LEASEHOLD HOUSE, UTENSILS, AND GOOD WILL OF BUSINESS.

ARTICLES OF AGREEMENT indented, made, and agreed on, the day of , 18 ; BETWEEN [*vendor*], of, &c. of the one part, and [*purchaser*], of, &c. of the other part.

Parties.

WHEREAS, the said [*vendor*] hath for some time carried on and exercised the trade or business of a at , in the county of , at a (*workshop* (or *manufactory*) there; and which (*workshop* (or *manufactory*), with the appurtenances, the said [*vendor*] is entitled to, for the remainder of a term of years therein, granted to him by indenture of lease, bearing date on or about the day of 17 , and made between [*lessor*], of, &c. of the one part, and the said [*vendor*], of the other part. AND WHEREAS the said [*vendor*] hath made considerable repairs and improvements in the said (*workshop* (or *manufactory*), and premises comprized in the said indenture of lease, and hath purchased divers implements, utensils, and fixtures, for the purpose of carrying on the said business of a . AND WHEREAS the said [*vendor*], being about to quit the said business of a , the said [*purchaser*] hath contracted and agreed with him for the purchase of the said (*workshop* (or *manufactory*), with the appurtenances, for the remainder of the said term of years, by the said indenture of lease granted; *and also* of the implements, utensils, and fixtures (*a*) in and upon the said

Recital that vendor carried on business.

Reference to lease.

Recital that vendor has made additions and improvements.

Recital of contract to sell premises, utensils, fixtures, and good will of business.

(*a*) *or* " particularly enumerated and described in the schedule hereunder written, or hereunto annexed,"

Utensils, &c. specified in schedule.

PURCHASE OF LEASEHOLD HOUSE, UTENSILS, AND GOOD WILL OF BUSINESS.

Terms of the contract.

premises, and used or employed in the said trade or business of a , and of the good will of the said [*vendor*] in the same business, on the terms and conditions following, that is to say; that he the said [*purchaser*] should, on the execution of the assignment and conveyance of the said (*workshop* (or *manufactory*) and premises, with the said implements, utensils, and fixtures, secure to the said [*vendor*], his executors, administrators, or assigns, the sum of thousand pounds, payable at the end of (*three*) years from the date of these presents; with interest for the same, payable at the expiration of each year, after the rate of five pounds for each hundred pounds by the year: The said principal sum of thousand pounds, and the interest thereof, to be secured by the joint and several bond of the said [*purchaser*], and some other person as his surety, to be approved of by the said [*vendor*], in the penal sum of thousand pounds; *and also* by (*three*) several promissory notes, to be given by the said [*purchaser*] to the said [*vendor*], at the expiration of the first (*two*) years of the said term of (*three*) years, for the payment of the said sum of thousand pounds, by (*three*) several payments, as follows, that is to say; one of the said promissory notes to be for the payment of the sum of thousand pounds and interest, at (*four*) months after the date thereof; one other of the same notes to be for the payment of the sum of thousand pounds and interest, at (*eight*) months from the date thereof; and the other of the same notes to be for the payment of the like sum of thousand pounds and interest, at (*twelve*) months from the date thereof; *and also* to pay the said [*vendor*], his executors, administrators, or assigns, interest for the said sum of thousand pounds, or so much thereof as should remain due, until the whole of the said sum of thousand pounds should be paid off and discharged; *and* that the said [*purchaser*] should (*b*) secure to be paid to the said [*vendor*], his executors,

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(*b*) If it be the agreement, say,

"upon the execution of the said assignment give unto the said [*vendor*], three several promissory notes for the pay-

administrators, or assigns, by the bond of him the said [*purchaser*], in a sufficient penalty, the yearly sum of pounds, for and during the term of (*three*) years from the date of these presents, as a consideration for the good will of the said business; the said sum of pounds, to be paid to the said [*vendor*], his executors, administrators, and assigns, at the expiration of each year, from the date of these presents, (*or* from the execution of the assignment) but without any interest for the same. NOW THESE PRESENTS WITNESS, and the said [*vendor*], in consideration of the sums to be paid to him, his executors, administrators, or assigns, by the said [*purchaser*] as hereinafter is mentioned, doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*purchaser*], his executors, administrators, and assigns, that he the said [*vendor*], his executors or administrators, shall and will, on or before the day of next, at the proper costs and charges in the law of the said [*purchaser*], his executors or administrators, well and effectually convey, assign, and assure, or cause or procure to be well and effectually conveyed, assigned, and assured, by all proper and necessary parties, and with all proper, usual, and necessary covenants, unto the said [*purchaser*], his executors, administrators, and assigns; THE said (*workshop* (or *manufactory*) at aforesaid, with the appurtenances thereunto belonging, for the residue then to come of the said term of years; *And also* all the implements, utensils, and fixtures, (*c*) in or upon the said (*workshop* (or *manufactory*), or

PURCHASE OF LEASEHOLD HOUSE, UTENSILS, AND GOOD WILL OF BUSINESS.

Agreement to convey.

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ment of the sum of pounds, in manner and at the times following, that is to say; one of such notes for the payment of pounds, at the end of one year from the date hereof; another of such notes for the payment of pounds, at the end of two years from the date hereof; and the other of such notes for the payment of pounds, at the end of three years from the date hereof, as a consideration, &c." *as above.*

(*c*) *or*, "particularly enumerated and described in the schedule hereunder written, or hereunto annexed."

Utensils, &c. specified in schedule.

PURCHASE OF LEASEHOLD HOUSE, UTENSILS, AND GOOD WILL OF BUSINESS.

used or employed in the said trade or business of a , or in any wise relating thereto; *And* the full, whole, and absolute estate, right, title, interest, term and terms of years which shall be then to come and unexpired, property, possession, benefit, claim, and demand whatsoever, both at law and in equity, of him the said [*vendor*], of, in, to, or out of the same several premises, every or any part or parcel thereof: And also shall and will, from time to time, and at all times hereafter, recommend the said [*purchaser*], as a to all the late or present customers of him the said [*vendor*]; *and* do his utmost endeavours to procure them to deal and trade with the said [*purchaser*]: And that he the said [*vendor*], shall not nor will, at any time within the space of (*seven*) years hence next ensuing, directly or indirectly, by himself or in partnership with any person or persons whomsoever, trade or deal in the said trade or business of a in , aforesaid, or within the space of miles thereof. (*d*) And the said [*purchaser*] doth for him-

Covenant from vendor to recommend purchaser to his late customers;

and not to carry on the business at for seven years.

Covenant from purchaser to pay a sum for

(*d*) Though a bond, covenant, or promise, even on good consideration, not to use a trade *any where in England*, is void, as being too general a restraint of trade; yet if such bond, covenant or promise, be not to use a trade *at a particular place*, it is good. *Prugnell* v. *Gosse*, Allen, 67. 1 Roll. Abr. 16. pl. 6. *Jelliet* v. *Broade*, Noy, 98. For the same reason it seems, that a bond, covenant, or promise, not to use a trade with *particular customers*, by name, if founded on a good consideration, is also valid. *Hunlocke* v. *Blackstone*, 2 Saund. 156. All the cases on this subject, prior to *Mitchell* v. *Reynolds*, 1 P. Wms. 181, are noticed in that case. There, in debt on bond, the defendant prayed oyer of the condition, which recited, that whereas the defendant had assigned to the plaintiff a lease of a messuage and bakehouse in *L.* in the parish of *St. A.* for the term of five years, if the defendant should not exercise the trade of a baker *within that parish* during the said term; or in case he did, should, within three days after proof thereof made, pay to the plaintiff 50*l.* *then* the obligation to be void: and pleaded that he was a baker by trade; that he had served an apprenticeship to it, by reason whereof the bond was void in law, wherefore he traded as he well might: and, on demurrer, the court was of opinion, that a special consideration being set forth in the condition, which shews it was reasonable for the parties to enter into it, the bond was good; and that the true distinction was not be-

self, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*vendor*], his ex-

PURCHASE OF LEASEHOLD HOUSE, UTENSILS, AND GOOD WILL OF BUSINESS.

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tween *promises* and *bonds*, but between contracts *with* and *without* consideration; and that wherever a sufficient consideration appeared to make it a proper and a useful contract, and such as could not be set aside without injury to a fair contractor, it ought to be maintained; but with this constant diversity, viz. where the restraint is *general*, not to exercise a trade *throughout the kingdom*, and where it is limited to a *particular place*—that the former is void, being of no benefit to either party, and only oppressive; but the other is good. The principle of this case was afterwards recognised and adopted in *Chesman* v. *Nainby*, 2 Stra. 739. 2 Ld. Raym. 1456. 3 Bro. P. C. 349. *S. C.* So, where the condition of a bond was, that, in consideration *A.* would take *B.* as an assistant in his business as a surgeon, for so long a time as it should please *A.*, *B.* agreed not to practise on his own account for fourteen years within ten miles of the place where *A.* lived, the bond was held good. *Davis* v. *Mason*, 5 T. R. 118. See *Sloman* v. *Walter*, 1 Bro. C. C. 418. [Nor is a bond by a surgeon not to practise within twenty miles of a place, illegal, 2 Chit. 407. The condition of a bond not to open a shop within a mile of a place is to be construed by an admeasurement by the shortest foot-path. *Wood* v. *Dennett*, 2 Stark. 89.] And where by indenture between *A.* and *B.* and *C.*, dissolving their partnership as rope-makers, *A.* and *B.* covenanted to allow *C.*, during his life, two shillings on every hundred weight of cordage which they should make, on the recommendation of *C.*, for any of his friends and connections, and whose debts should turn out to be good: and that *A.* and *B.* should stand the risk of such debts incurred; but *should not be compelled to furnish goods to any of C.'s connections whom they should be disinclined to trust.* And *C.* covenanted not to carry on the business of a rope-maker during his life (except on government contracts); and that all debts contracted, or to be contracted in his or their name, pursuant to the indenture, should be the exclusive property of *A.* and *B.*; and that *C.* should, during his life, exclusively employ *A.* and *B.*, and no other person, to make all the cordage ordered of him, by or for his friends and connections, on the terms aforesaid, and should not employ any other person to make any cordage on any pretence whatsoever. It was holden, that the covenant by *C.* to employ *A.* and *B.* exclusively to make cordage for his friends, and not to employ any other, *A.* and *B.* not being obliged to work for any other than such as they chose to trust, was not illegal and void, as being in restraint of trade without adequate consideration; for the whole indenture must be construed together according to the apparent reasonable intent of the parties; and the general object being only to appropriate

good will of business, by three yearly instalments.

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ecutors and administrators, by these presents, in manner following, that is to say; that he the said [*purchaser*], his heirs, executors, or administrators, shall and will pay, or cause to be paid unto the said [*vendor*], his executors, administrators, or assigns, during the said term of (*three*) years, to be computed from the time aforesaid, the clear yearly sum of pounds, of lawful money of Great Britain [and Ireland], at the expiration of every year of the said term of (*three*) years, as a consideration for the good-will of the said premises as aforesaid: AND ALSO that he the said [*purchaser*], together with some other person, to be approved of by the said [*vendor*], shall and will give and execute unto the said [*vendor*], a bond in the penalty of thousand pounds, for the payment unto the said [*vendor*], his executors, administrators, or assigns, of the sum of thousand pounds, at the expiration of (*three*) years, together with interest for the same sum of thousand pounds, after the rate of five pounds for one hundred pounds by the year; such interest to be paid at the expiration of every year of the said term of (*three*) years: AND ALSO that he the said [*purchaser*], his executors, or administrators, shall and will, at the end or expiration of

And to give bond, with surety, for payment of purchase money at end of three years, with interest thereon yearly.

And at the end of two years give promissory notes for payment of purchase money by three instalments.

to *A.* and *B.* so much of *C.'s* private trade as they chose to give his friends credit for, so much only was covenanted to be transferred: and *C.* was still at liberty to work for any of his friends, who were refused to be trusted by *A.* and *B.*; by which construction the restraint on *C.* was only co-extensive, as in reason it could only be intended to be, with the benefit to *A.* and *B.*; and therefore the restraint on *C.* could be no prejudice to public trade. *Gale* v. *Reed*, 8 East, 80. 2 Saund. 156, n. See *Crutwell* v. *Lye*, 17 Ves. 335. 1 Fonbl. Treat. Eq. 265, 5th edit. 1 Bac. Abr. 645, Gwill. edit. *Conditions* (K). 1 Vin. Abr. 294. pl. 6. 20 Vin. Abr. 324. *Trade* (F). [Nor is an agreement between two coach proprietors to equalize their fares illegal as in restraint of trade. *Hearn* v. *Griffith*, 2 Chitt. Rep. 407. Nor does an agreement for a good-will import restraint. *Harrison* v. *Gardner*, 2 Madd. 219. And see *Bryson* v. *Whitehead*, 1 Sim. and Stu. 74. A condition not to seek orders in certain towns, except at certain times, has also been held reasonable. *Homer* v. *Ashford*, 3 Bing. 322. But a corporation under a general power to make by-laws, cannot make a by-law in restraint of trade, unless there is a special custom to support it. *Chamberlain of London* v. *Compton*, 7 Dow. and Ry. 597. *Ed.*]

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the term of (*two*) years, to be computed from the day of the execution of the said assignment, make and deliver to the said [*purchaser*], his executors or administrators, three several promissory notes in writing, under the hand or hands of the said [*purchaser*], his executors or administrators, which said promissory notes shall all of them bear date on the day of the expiration of the said (*two*) years, and to be made for securing the payment to the said [*vendor*], of the several sums, and at the several times following, that is to say; one of such promissory notes for the payment of the sum of thousand pounds, and interest, at (*four*) months after the date thereof; one other of such promissory notes for the payment of the like sum of thousand pounds, and interest, at (*eight*) months after the date thereof; and the other of the said promissory notes for the payment of the like sum of thousand pounds, and interest, at (*twelve*) months from the date thereof; AND ALSO that he the said [*purchaser*], his executors or administrators, shall and will well and truly pay, or cause to be paid unto the said [*vendor*], his executors, administrators, or assigns, interest for the sum of [*purchase money*] thousand pounds, or on such part thereof as shall remain due and unpaid, after the rate of five pounds for each hundred pounds thereof, by the year, on the last day of each year of the said term of (*three*) years. AND *it is hereby further agreed*, that the said [*vendor*] shall remain in possession of the said premises, and be at liberty to use and enjoy the said utensils, implements, and fixtures, in the same manner as heretofore; *and also*, shall pay all rent, taxes, rates, assessments, and other outgoings, up to the said day of next; on which day the same shall be respectively delivered to the said [*purchaser*]. IN WITNESS, &c.

Covenant to pay interest yearly.

Vendor to carry on trade, and pay rents, &c. till completion of contract.

THE SCHEDULE to which the above (*or* within) written agreement refers.

Utensils, &c. specified in schedule.

PURCHASE OF ADVOWSON, OR GREAT OR SMALL TITHES.

AGREEMENT *for the Purchase of the Right of Patronage of an* ADVOWSON, *or of the* GREAT *or* SMALL TITHES, *in Fee, for Life, or for Years.*

Parties.

ARTICLES OF AGREEMENT made and entered into the day of 18 ; BETWEEN [*vendor*], of, &c. of the one part, and (*a*) [*purchaser*], of, &c. of the other part.

Agreement to sell.

Parcels.

First the said [*vendor*], for himself, his heirs, executors, and administrators, hereby agrees to sell to the said [*purchaser*], ALL THAT (*b*) the advowson, donation, right of patronage and presentation of, in, and to the rectory or parish, and parish church of in the county of , and

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FEE. (*a*) *Vide post*, 182, (*a*).

GREAT TITHES. (*b*) "ALL the tithes* of corn, grain, and hay, and other great or rectorial tithes and tenths, which shall arise or grow due within the parish of , in the county of , with the appurtenances belonging to the impropriate rectory of , aforesaid."

SMALL TITHES. "ALL the tithes, tenths, dues, and duties, usually paid or accounted as small, or vicarial tithes, which shall arise or grow due within the parish of , in the county of ."

Describe the tithes in the body of the agreement, "the said tithes."

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* As to the distinction between great and small tithes, see 2 Wooddeson's Vinerian Lectures, 89. 3 Burn's Eccle. Law, 408, 6th ed. 6 Bac. Abr. 714, 731. Gwill. ed. *Tythes*, (C) (D) and (K). Toller on Tithes, 59. Mirehouse on Tithes, 2.

of the fee simple and inheritance thereof (*b*), with all and every, the rights, members, and appurtenances to the same belonging, free from all incumbrances, at or for the price or sum of pounds: AND ALSO to deliver unto the said [*purchaser*], within months from the date hereof, a full, complete, and perfect abstract of the title of the said [*vendor*] to the said advowson: AND if the counsel of the said [*purchaser*] should be of opinion that the said [*vendor*] has a good title thereto, Then that he the said [*vendor*], and all other necessary parties (*c*) and persons interested in the purchase money, shall on or before the day of now next, by good and sufficient conveyances and assurances in the law, and with the usual and other proper covenants for the title, for quiet enjoyment, and for further assurance, convey and assure the said advowson with the appurtenances, unto the said [*purchaser*] (*d*), his heirs and assigns, or as he or they shall

PURCHASE OF ADVOWSON, OR GREAT OR SMALL TITHES.

To deliver abstract.

To execute conveyance.

(*b*) If for life, say,

FOR LIFE.

" for the natural life of the said [*purchaser*], (or *nominee* of, &c.),"

If for lives, say,

FOR LIVES.

" for the natural lives of [*nominees*], of, &c. and the natural lives and life of the survivors and survivor of them,"

If for years, say,

FOR YEARS.

" for the term of years from the date hereof,"

If for years determinable on lives, say,

FOR YEARS DETERMINABLE ON LIVES.

" for the term of years from the date hereof, If the said [*purchaser*] (or [*nominee*,] of, &c.) should so long live,"

(*c*) A husband is tenant by the curtesy of an advowson, though the church was not void during the marriage: Co. Litt. 29. a. Perk. s. 468. and a woman is dowable of an advowson in gross or appendant. Cro. Jac. 621. *post*, 181.

(*d*) " for his life (*or* unto the said [*purchaser*], his heirs and assigns*, (for the natural life of the said [*nominee*],

FOR LIFE OR LIVES.

(*) It seems that an estate for lives, whether lying in livery or in grant, cannot be *limited* to executors, or administrators. *Vide* Noy's Maxims, 98, 9th ed. *sed vide contra*, Sug. Pow. 187. 2d ed. [198, 4th ed.] Watk. Conv. 18. 25. 2d. ed.

PURCHASE OF ADVOWSON, OR GREAT OR SMALL TITHES.

direct, free from all incumbrances (*e*). And the said [*purchaser*], for himself, his heirs, executors, and administrators, hereby agrees to pay the said sum of

Agreement to pay purchase money.

pounds, unto the said [*vendor*], upon the execution of the said conveyance. And *it is further agreed*, that the conveyance to the said [*purchaser*] shall be prepared by him at his own costs and charges; but that in all other respects, each of the said parties shall pay the fees of his own counsel, and the charges of his own solicitor: And

Purchaser to pay for conveyance;

but in other respects each party to pay his own counsel, &c.

that in case of the decease, cession, deprivation, or relinquishment of the present incumbent of the said advowson, before the said day of , the said [*vendor*] shall duly present such person to the said advowson, as the said [*purchaser*] shall nominate: And that if the presentation to the said advowson should devolve on the crown, in consequence of the present or any succeeding incumbent being promoted to a bishoprick (either) before (or after) the said day of , this contract shall not be affected thereby, nor shall the said [*purchaser*] be entitled to any deduction out of the said purchase money. (*Add clauses*, (*f*) *time to be the essence of the contract, and for liquidated damages*, ut ante, 79. 158. 148.) In witness, &c.

In case of incumbent's death before conveyance, purchaser to nominate next incumbent.

If incumbent be made a bishop, contract not to be affected.

(*or* for the natural lives of the said [*nominees*], and the natural lives and life of the survivors and survivor of them,) his executors, administrators, and assigns, for the said term of years, (determinable as aforesaid),"

FOR YEARS.

(*e*) If for life or years, say,

FOR LIFE OR YEARS.

"And also shall, at the execution of the said conveyance, at his own charges, deliver unto the said [*purchaser*] true and attested copies of all deeds, evidences, and writings, concerning the said advowson; *and* in the said conveyance enter into the usual covenant for the production of the originals, and to permit the said [*purchaser*] to have any fresh copies thereof respectively from time to time, at his own expense:"

To deliver attested copies of title deeds, and covenant to produce originals.

Or if the purchase be in fee, and the deeds relate to other property of greater value than the advowson, the above form, or the form, *ante*, 85. (*m*). may be used.

Deeds relating to property of greater value.

(*f*) Upon the promotion of any spiritual person to a bishopric,

On promotion of clergymen to bishopricks, the

PURCHASE OF ADVOWSON, OR GREAT OR SMALL TITHES.

whether in England, or in the Isle of Man, all the benefices or dignities, except donatives, which he was possessed of before such promotion, are void upon his consecration, and upon his confirmation, in case of translation; and the king is entitled for that turn to present to them in right of his royal prerogative, although the advowson belongs to a common person. 2 Bla. Com. 383. Wood's Inst. 37, 10th ed. 3 Com. Dig. 198. *Esglise*, (H. 6.) 2 Burn's Eccle. Law, 3, 6th ed.

crown is intitled to present for next turn, except in the case of donatives.

But the bishop may prevent the avoidance by dispensation of *retainer* of such benefices which he had, if obtained before his consecration, or confirmation of his election; which is commonly called a *commendam retinere*, and is usually granted by the archbishop of Canterbury, according to the 25 Hen. VIII, c. 21, upon the king's mandate expressing his consent to it, as the true patron of the benefice for that turn; and it seems that by a commendam for life, and for the time of continuing in the bishoprick, the turn of the crown is answered, and in such a case the proper patron shall present upon the death or translation; but that the right of the crown shall not be defeated by a commendam granted for a term of months or years certain and limited. Gibson's Codex, 763. 913. 914. 915. 2d ed.

Bishop may prevent avoidance by retainer.

Commendam retinere for life, the patron shall present next.

This, however, appears to have been an usurpation of the crown, and anciently the law was taken to be, that the rightful patron ought to present; and as Levinz says, there is little or no reason that the king should present, because he has promoted the parson; for the church is the patron's church, and it is reasonable he should have the presentation of such a parson thereto, under whom he and his tenants and servants are to live; whose manners, doctrine, religion, and conversation, ought to be such as he shall approve: and by the same reason, if the king promote my chaplain of my family, or my bailiff, or other servant, he may impose another upon me. That anciently the king had no such prerogative is clear; 1. Because no mention is made of any such prerogative either in the king, or the pope, as certainly there would have been, if any such thing had then been. 2. There is no mention of it in the stat. *de prerogativa Regis*, 17 Edw. II. st. 1. which for the most part is but a sum or collection of certain prerogatives that were known law long before: 5 Bac. Abr. 489. nor in Stamford's treatise upon that statute, (see particularly cap. 8.) 3. And in the 5 Edw. II. 148. in the book published by Serj. Maynard, it appears that Hugh de Courtney brought a *Quare impedit*, and counts, that the Countess of Albemarle was seised, and presented a clerk, who was made a bishop, and so derives a title to the plaintiff to present; but there is no mention of the king's prerogative, or any presentment by him upon the parson's promotion to the bishoprick. 4. Nor is any such thing mentioned in any of our ancient books, as Glanville, Bracton, Britton, Fleta, Doctor and Student, (see particularly Dial. 2, ch. 36, 37. p. 218. 220. 18th ed.) &c. and it has been denied to be law, as in

But it seems the crown had not this prerogative anciently.

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Dyer 228, b. 3 Lev. 378. But the king's prerogative in such cases has been favoured since, and the law has now been settled, however repugnant to reason, as Dr. Watson says, Clergyman's Law, 74, 4th ed. cap. 9. that the king shall present upon such an avoidance. *Wright's* case, Moor, 399. *Edes* v. *Waller*, Vaughan, 19. *Rex* v. *Episcop. London*, and *Dr. Lancaster*, 3 Lev. 377. 1 Ld. Raym. 23. Holt, 586. Salk. 540. 4 Mod. 206. 1 Show. 441. Mr. Justice Dolben said, however, it had been always grumbled at; that it never came in question, but some judge or other was against it; it having been so common in great livings, that the true patron in St. Andrew's, Holborn, had not presented above once in a hundred years, when he presented Dr. Stillingfleet; and he added, the church would suffer by it, because there was no one who had a great living, but would present a blockhead who was not likely to be made a bishop, in order to preserve his presentation. 1 Show. 461, 462, 463.

The king has this prerogative, although the advowson be newly created, and he has it *toties quoties*.

The king has this prerogative, whether the church be new or old; and it extends as well to the second, third, and all other successive promotions to bishopricks from the same benefice or dignity. Gibson's Codex, 763, 2d ed. Thus, by the 1 Jac. II. it was enacted, that St. James in the Fields should be divided from the parish of St. Martin, and a church erected there; and that it should be a parish of itself; and it was determined in the *King* v. *Bishop of London* and *Birch*, 3 Lev. 382. 2 Salk. 540. 4 Mod. 200. 1 Show. 164. S.C. on the promotion of the rector of the parish of St. James to a bishoprick, that the king has the same prerogative in churches newly erected, as in the old, to present on promoting the parson to a bishoprick; and in the above case of the *King* v. *Bishop of London*, and *Dr. Lancaster*, 3 Lev. 377, the crown presented thrice successively to the living of St. Martin in the Fields: and so where the rector of Bow Church, &c. united into one parish by the 22 Car. II. c. 11. s. 63. was created Bishop of Rochester, King Geo. I. by his prerogative, in 1720, presented Dr. Lisle, who being afterwards created bishop of St. Asaph, King Geo. II. in 1744, presented Dr. Newton in like manner. *Grocer's Company* v. *Archbishop of Canterbury*, 3 Wils. 216. 2 W. Blacks. Rep. 770, S. C.

Quære, whether this doctrine extends to Ireland.

But it is said that by a law in Ireland, no person can accept a bishoprick there, until he has resigned all the preferments which he has in *England*: which preferments being void before the acceptance of the bishoprick, it seems that the king in such case shall lose the presentation. 1 Burn's Eccle. Law, 142, 6th ed. The stat. 7 Edw. IV. c. 2. 1 Vol. Irish Statutes, 32, that none shall purchase benefices *in commendam* from Rome, does not extend to this. And see *Evans* & *Kiffin* v. *Ascuith*, Noy, 93; the notes to Dyer, 228, b. 3 Wils. 232, and Wood's Inst. 37, *contra*.

The right of the crown postpones, but does

This right of the crown to present upon promotion, postpones the right of any grantee who has the next avoidance; as in the case put in

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Co. Litt. 379, a. that if a man seised of an advowson in fee, whether in gross or appendant, take a wife; by act in law the wife is entitled to the third presentation, if the husband die before. F. N. B. 148, C. 150, G. Perk. s. 342, 343. Co. Litt. 32, a.: and if the husband grant the third presentation to another, and the husband die before the church becomes void, the heir shall present twice, and the wife shall have the third presentation, and the grantee the fourth; for in this case, it shall be taken to be the third presentation, which he might lawfully grant. Thus in the *Grocer's Company* v. *Archbishop of Canterbury*, in which three patrons had a right to present by turns, it was decided by the whole court, that the prerogative presentations cannot be considered as *turns*, or deprive a patron of his turn; for a prerogative presentation upon the promotion of an incumbent to a bishoprick, is by act of law, which cannot operate to the injury of a third person; for *constructio et actus legis nulli facit injuriam*. Co. Litt. 148, 183, a. b. 2 Inst. 287. Dyer, 35. b. In fact this is the *fifth* vacancy, but with respect to the patrons, it is but the *third* opening or avoidance, wherein the presentation of a patron, having the third turn, could take place. 3 Wils. 232. 2 W. Blacks. Rep. 773. *Vide* Perk. s. 331. 332. Hal. MS. n. Co. Litt. 32. b. (2).

not defeat the right of the person having the next presentation.

So the grant of a next presentation to a benefice was decided to mean the next which the grantor could by law be intitled to make; and that therefore if the present incumbent be made a bishop, a covenant for title in the grant is not broken, and the grantee may present on the next vacancy. *Calland* v. *Troward*, 2 Hen. Blacks. 324. *Troward* v. *Cailland*, in error, 6 Term Rep. 439, affirmed in the House of Lords, *Ib.* 778.

A grant of the next presentation means that which the grantor is next entitled to.

Where a person having notice that the incumbent of a rectory was on his death bed, and that it was uncertain whether he would live over the night, purchased the advowson; the incumbent died the next day; whereupon the purchaser presented his clerk, who was not privy to the contract; and the court was of opinion, that the presentation was not void, it not appearing to have been made upon a simoniacal contract, *Barret* v. *Glubb*, 2 Wm. Blacks. Rep. 1052. [But see *Fox* v. *Bishop of Chester*, where a similar transaction was held clearly simoniacal, and the privity of the clerk not essential to make it so. 2 B. and C. 635. and 4 D. and Ry. 93. *Ed.*]

Purchaser of advowson, incumbent being *in extremis*, clerk not being privy, next presentation good.

The grant of the next presentation, or of an advowson, made after the church is actually vacant, is a void grant *quoad* the fallen vacancy, but it is good as to the advowson itself; unless it be a corrupt purchase. *Wolferstan* v. *Bishop of Lincoln*, 2 Wils. 174. 3 Burr. 1504. 1 Wm. Blacks. Rep. 490. 2 *Ib.* 1054. and Serj. Hill's MS. notes.

Next presentation cannot be granted after church is vacant.

PURCHASE OF NEXT PRESENTATION TO PARSONAGE.

AGREEMENT *for the Purchase of the* NEXT PRESENTATION *to a Parsonage.*

Parties.

ARTICLES OF AGREEMENT made this day of 18 ; BETWEEN [*vendor*], of, &c. for himself, his heirs, executors, and administrators, of the one part, and [*purchaser*], (*a*) of, &c. for him-

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Catholics cannot present to benefices; and grants by them must be to protestant purchaser.

(*a*) By the stat. 12 Ann. stat. 2, c. 14, s. 1, Roman Catholics are disabled from presenting to any benefice; and every such presentation is declared void to all intents and purposes. By the stat. 11 Geo. II. c. 17, s. 5. every grant made of any advowson, or right of presentation, collation, nomination, or donation to any benefice, by any person professing the catholic religion, or by any mortgagee, or trustee of such person, shall be null and void; unless it be for valuable consideration to a protestant purchaser. 3 Cru. Dig. 26. 2d ed.

Penalty on taking for any sum of money, &c. the next avoidance, &c. 31El. c. 6. 1W. & M. st. 1. c. 16.

The stat. 12 Ann. c. 12, s. 2. after reciting "Whereas some of the clergy have procured preferments for themselves by buying ecclesiastical livings, and others have been thereby discouraged," enacts, "That if any person, from and after the twenty-ninth day of *September* one thousand seven hundred and fourteen, shall or do, for any sum of money, reward, gift, profit or advantage, directly or indirectly, or for or by reason of any promise, agreement, grant, bond, covenant or other assurance, of or for any sum of money, reward, gift, profit or benefit whatsoever, directly or indirectly, in his own name, or in the name of any other person or persons, take, procure, or accept the next avoidance of, or presentation to any benefice with cure of souls, dignity, prebend, or living ecclesiastical, and shall be presented or collated thereupon, that then every such presentation or collation, and every admission, institution, investure and induction upon the same, shall be utterly void, frustrate, and of no effect in law, and such agreement shall be deemed and taken to be a simoniacal contract; and that it shall and may be lawful to and for the Queen's majesty, her heirs and successors, to present or collate unto, or give or bestow every such benefice, dignity,

PURCHASE OF NEXT PRESENTATION TO PARSONAGE.

self, his heirs, executors, and administrators, of the other part.

Agreement to sell.

THE said [*vendor*] agrees to sell, to the said [*purprebend* and living ecclesiastical, for that one time or turn only; and the person so corruptly taking, procuring, or accepting any such benefice, dignity, prebend, or living, shall thereupon, and from thenceforth, be adjudged a disabled person in law to have and enjoy the same benefice, dignity, prebend, or living ecclesiastical, and shall also be subject to any punishment, pain, or penalty, limited, prescribed, or inflicted by the laws ecclesiastical, in like manner as if such corrupt agreement had been made after such benefice, dignity, prebend, or living ecclesiastical had become vacant; any law or statute to the contrary in any wise notwithstanding."

In the late Serjt. Hill's copy of Sir William Blackstone's Rep. under *Barret* v. *Glubb*, 1053, he says, from the title of the act, the general opinion has been, as mentioned by Ch. J. de Grey in this case, that the statute hath disabled every clergyman from purchasing the next presentation of any church preferment; but it is observable, that the purview of the act does not extend to a purchase by a clergyman, unless he, or some other for whom he purchased it, be presented or collated thereupon; and on the other hand, though the purchaser was a layman, yet if he afterwards took orders, and was presented or collated to the living, &c. the next presentation of which he had purchased, the case would be within the purview.

But it appears by the following opinion of the learned Mr. Fearne, that the purchase of an advowson in *fee* by a clergyman, and a presentation of himself upon the death of the incumbent, is not within the statute:

"I cannot say I see any thing to impeach the legality of the purchase by A. B. of the perpetuity of the advowson, or his being presented on the next avoidance, by a trustee of his own, to whom he shall have conveyed the advowson, previous to such avoidance. The 12th Ann. stat. 2. c. 12, prohibits a clergyman's purchasing the next avoidance, or presentation to any benefice for himself; but I do not apprehend that statute at all affects the case of a purchase of the perpetuity of the advowson, or affects the right of presentation in that case; and, consequently, it appears to me, that if A. B. by deed, grants the advowson to, and to the use of some person and his heirs, who, by another deed of even date, declares the conveyance to be in trust for the said A. B. and his heirs, the said A. B. may afterwards, upon the happening of an avoidance, be legally presented by his said trustee." Fearne's Posth. Works, 409.

PURCHASE OF NEXT PRESENTATION TO PARSONAGE.

chaser], for the sum of pounds, the first and next donation, nomination, presentation, and free disposition (*b*) of and to the rectory and parish church of in the county of , which shall or may happen, accrue, or arise, upon or in consequence of the vacancy or avoidance of such rectory or living, by death, cession, deprivation, or relinquishment, or by whatsoever other ways or means the said church shall first or next happen to be void: AND ALSO to deliver unto the said [*purchaser*], within months after the date hereof, an abstract in the usual manner, of the title (*c*) of the said [*vendor*], to grant the next presentation of and to the said rectory and parish church: AND ALSO on receiving the said sum of pounds, to execute a grant, or other assurance, of the next presentation to the said rectory and parish church unto the said [*purchaser*], his executors, administrators, or assigns (*d*), or as he or they shall direct; in which all proper and necessary parties (*e*) and persons

To deliver abstract.

To execute conveyance.

Proper parties and persons, interested in purchase money to join.

Purchase of next presentation, with intention to present a certain person, not simony, it seems.

(*b*) Where a person purchased the next presentation to a benefice, the church being then full, with an intention to present a particular person, a subsequent presentation of that person was formerly deemed simony; but it is now an universal practice to purchase the next presentation to a living, the church being full; and there is no modern instance where presentation under such circumstances has been questioned. 3 Cru. Dig. 33, 2d ed. [And see, as to simony, vol. III. 360, n. (*a*)]

Title to advowson in *gross* should be shewn for more than sixty years.

(*c*) The stat. 1 Mar. stat. 2, cap. 5. s. 4, having repealed the several statutes of limitation as to advowsons; the title to an advowson in *gross* should be carried back to the original grant, or at least the presentations, by the persons under whom the vendor claims, should be shown so far back as to satisfy a reasonable mind of the goodness of the title. But if the advowson be *appendant* to a manor, &c. a title for sixty years may, as in the case of lands, be generally sufficient. [See *Gibson* v. *Clark*, 1 Jac. and Walk. 159.]

Right of next presentation vests in executors.

(*d*) The next presentation to a church, if not disposed of by will, vests in the executors or administrators. *Smithley* v. *Chomeley*, Dyer, 135, a. Wentw. Off. Ex. 36, Wilson's ed. 13 Vin. Abr. 84. *Faits* (M. a. 24.) See n. (*g*) 185.

Mortgagee and trustee must present nominee of mortgagor, &c.

(*e*) The mortgagee of an advowson, whether appendant or in gross, has the legal right to present; but until foreclosure, a court of equity will compel him to present the nominee of the mortgagor: because the mortgagee can make no profit by presenting to the church, nor can he account for any value in respect of it to sink or lessen his debt. *Am-*

PURCHASE OF NEXT PRESENTATION TO PARSONAGE.

beneficially interested in the purchase money shall join; and which shall contain the usual and proper covenants for title, quiet enjoyment, and further assurance; and shall be prepared by, and at the expense of the said [*purchaser*]: AND also to deliver at his own charges, to the said [*purchaser*], at the execution of the said conveyance, true and attested copies of the several title deeds, evidences, and writings, relating to the said rectory and parish church; and by the same conveyance covenant, in the usual manner, to produce the same title deeds, evidences, and writings, and to permit the said [*purchaser*] to have future copies thereof at his own charges. AND THE SAID [*purchaser*] agrees, upon the execution of the said conveyance, to pay to the said [*vendor*], the said sum of pounds. (Add clauses,—*time to be the essence of the contract, and for liquidated damages*, ut ante, 158. 148.) AND *it is further agreed* (*f*), that if the present or any succeeding incumbent of the said rectory should at any time hereafter during his incumbency of the said rectory be created a bishop, whereby the right of presentation to the same rectory may devolve to the crown, then the said [*purchaser*] shall have the first or next turn or right of presentation to the said rectory, after the crown. IN WITNESS, &c. (*g*)

Usual covenants.

Conveyance at purchaser's expense.

To deliver attested copies; and covenant to produce deeds.

To pay purchase money.

If present or succeeding incumbent be made a bishop, purchaser to have the next presentation.

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hurst v. *Dawling*, 2 Vern. 401. *Gally* v. *Selly*, Com. Rep. 343. 1 Stra. 403, S. C. So a trustee must present the clerk of the *cestui que trust*. 2 Atk. 483. 2 W. Blacks. Rep. 1053.

(*f*) This being the rule of law on the subject, *ante*, 178 (*f*)—it is mentioned on an honourable principle, that the purchaser may be aware of it, and provide accordingly. When it is probable the incumbent will be promoted to a bishopric, and sometimes when it is not probable, it is usual to insert a provision, should that event happen, to make a proportionable deduction from the purchase money, to be ascertained by two arbitrators, or their umpire; or to repay the purchase money, with interest at five per cent.

(*g*) [The right of presentation by a prebendary to an advowson in right of his prebend, is a spiritual trust, and in the case of voidance in his lifetime, but of his death before presentation, the right of presentation belongs to his successor, and not to his personal representatives. *Rennell* v. *Bishop of Lincoln*, 3 Bing. 228. *Ed.*]

PURCHASE OF FREEHOLD, COPYHOLD, AND LEASEHOLD.

AGREEMENT *for the Purchase of* FREEHOLD, COPYHOLD, *and* LEASEHOLD *Premises, for Lives, and for Years.*

Parties.

ARTICLES OF AGREEMENT made and entered into the day of 18 ; BETWEEN [*vendor*], of, &c. for himself, his heirs, executors, and administrators, of the one part, and [*purchaser*], of, &c. for himself, his heirs, executors, and administrators, of the other part.

Agreement to sell.

First, the said [*vendor*], in consideration of the sum of pounds, agrees to sell to the said [*purchaser*],

Parcels.

Freehold.

the fee simple and inheritance in possession of ALL THAT messuage or tenement, lands and premises, situate at , in the county of , called Farm, containing by estimation acres, more or less,

Copyhold.

and now in the occupation of ; AND ALSO the inheritance in possession, according to the custom of the manor of in the said county of of and in ALL THOSE several closes of arable land, situate in the said manor, containing by estimation acres, more or less, and now in the occupation of

For lives.

: AND ALSO the estate of him the said [*vendor*], for the lives of [*nominees*], granted and demised by indenture, bearing date on or about the day of

Reference to lease.

17 , and made between [*lessor*], of, &c. of the one part, and the said [*vendor*], of the other part, (*a*) (and afterwards perfected by livery of seisin,) of and in ALL THAT piece

For years. Reference to lease.

of meadow land, situate, &c. AND ALSO ALL THOSE three cottages, situate, &c. and now held by the said [*vendor*],

(*a*) If the estate for lives were created under a power deriving its effect from the statute of uses, livery of seisin would be unnecessary. See Noy's Maxims, 298, 9th ed.

for the remainder of a term of years, granted by indenture, bearing date on or about the day of 17 , and made between [*lessor*], of, &c. of the one part, and the said [*vendor*], of the other part: AND ALSO, at his costs, to make and deliver unto the said [*purchaser*], full, complete, and perfect abstracts of the title of the said [*vendor*] to the said freehold, copyhold, and leasehold premises respectively; but the said [*vendor*] shall not be required to produce any further evidence of the title to the said leasehold premises, for lives and for years, than the original leases, and all subsequent deeds and evidences relating thereto respectively: AND ALSO on or before the day of next, upon receiving the said purchase-money, by good and sufficient conveyances, surrenders, (*b*) assignments, and assurances; to be prepared by and at the costs of the said [*purchaser*], and with the usual and other proper covenants for the title, for quiet enjoyment, and for further assurance; and with all necessary and proper parties, and persons beneficially interested in the purchase money, to convey, surrender, assign, and assure unto the said [*purchaser*], or as he shall appoint, the said freehold, copyhold, and leasehold premises respectively, free from all incumbrances; *But subject* to the rents and services for the said copyhold premises, and to the rents, covenants, and conditions, mentioned in the said indentures of lease, from the said day of next: AND ALSO that any fine, common, or

PURCHASE OF FREEHOLD, COPYHOLD, AND LEASEHOLD.

To deliver abstract of title.

To convey.

Subject to rents, &c.

Vendor to pay for fines, recoveries, &c.

(*b*) It is a good custom in a manor, that the steward or his deputy should have the sole right of preparing all the surrenders of copyhold tenements within the manor; and the court will not grant a mandamus, where there is such a custom, commanding the steward to receive and examine a surrender prepared by any other person, although the requisite fees, &c. have been tendered. *Rex* v. *Rigge*, 2 Barn. and Ald. 550.

By custom, steward may have sole right of preparing surrenders.

Where there is no such custom, and where by the custom surrenders may be made out of court, they are frequently prepared by the parties' own solicitor. However they are usually prepared by the steward; and if this practice were more general it would sometimes prevent much mischief, inconvenience, and expense to the parties; as the steward is better acquainted with the different modes and customs of the manor, and with the customary tenements, than any stranger can be. See Fisher on Copyholds. 307. 2d ed.

PURCHASE OF FREEHOLD, COPYHOLD, AND LEASEHOLD.

customary recovery, covenant for production of title deeds, release, assignment, or surrender of any incumbrances, and of outstanding terms not already assigned to attend the inheritance, which shall be requisite or necessary to perfect the title to the said premises, shall be levied, suffered, made, and prepared respectively, by and at the expense of the said [*vendor*]: AND THE SAID [*purchaser*] agrees, upon the making of the said conveyances, surrenders, assignments, and assurances, to pay unto the said [*vendor*] the said purchase money: AND ALSO, if required by the said [*purchaser*], to covenant in the conveyance and assignment of the said leasehold premises, for payment of the rents, and performance of the covenants, in the said indenture of lease reserved and contained respectively; and to indemnify the said [*vendor*] therefrom, or otherwise, if required by the said [*vendor*]; to execute a bond in a sufficient penalty, or a deed of covenant, to be prepared by and at the costs of the said [*vendor*], for payment and performance of the same rents and covenants, and for indemnifying the said [*vendor*] therefrom. (*If a part only of the leasehold premises are sold: or if the consent of the lessor be necessary*, vide ante, 164, 165, 167, 168. *If the title deeds relate to other premises*, vide ante, 85. *Add clause as to errors in description*, ut ante, 144, 145: *as to time being the essence of the contract*, ut ante, 79, 158: *for liquidated damages*, ut ante, 148.) IN WITNESS, &c.

To pay purchase money.

Purchaser to covenant for payment of rent, &c. for leasehold, and to indemnify therefrom.

AGREEMENT *for the Purchase of* GROWING TIMBER. PURCHASE OF GROWING TIMBER.

ARTICLES OF AGREEMENT indented, made, and entered into the day of , 18 ; BETWEEN [*vendor*], (*a*), of, &c. of the one part, and [*purchaser*], of, &c. of the other part. Parties.

FIRST the said [*vendor*], in consideration of the sum of hundred pounds, of lawful money of Great Britain [and Ireland], to be paid by the said [*purchaser*], in manner hereinafter mentioned, and of the covenants and agreements hereinafter contained, and which by the said [*purchaser*], his executors, administrators and assigns, are to be observed and performed, *Hath* granted, bargained, and sold, and by these presents *Doth* grant, bargain and sell, unto the said [*purchaser*], his executors, administrators and assigns, ALL Vendor sells timber.

(*a*) As tenant in tail is restrained from aliening the estate without fine or recovery, so he is restrained from charging it, or disposing, by contract or agreement, of the lasting improvements, after his death. Therefore, if tenant in tail article for sale of the trees growing on the inheritance, the vendee must sever them during the life of tenant in tail ; for if he die before they are cut down, his issue shall have them as part of the inheritance, and the vendee shall not be permitted, after the death of tenant in tail, to fell one tree, though it be half cut down : for, as the tenant in tail has power over the inheritance only during his own life, he cannot delegate that power to another for a longer time ; and consequently, whatever remains part of the inheritance at the death of tenant in tail, when his power over it ceases, must necessarily go to the heir to whom the inheritance belongs. Bro. Abr. *Contract*, &c. 26. *Liford's* Case, 11 Co. 50. a. Poph. 194. Hob. 173. 1 Pow. Contr. 127. 3 Bac. Abr. 64. n. Com. Dig. *Biens* (H). Sale of timber, &c. by tenant in tail.

PURCHASE OF GROWING TIMBER.

and singular, the timber trees, and other trees hereinafter mentioned, being all set out and marked for sale, and standing, growing, and being in the several places hereinafter mentioned, (that is to say) hundred oak trees, marked with the letter S., together with the boughs, lops, tops, and bark thereof; AND ALSO hundred ash and elms, also marked with the letter S., together with the boughs, lops, tops, and bark thereof, standing, growing and being in and upon the demesne, or demesne lands of , and in and upon several lands and grounds, called ; all which said premises are now in the possession of : TOGETHER (*b*) with full and free liberty, power, and authority, for the said [*purchaser*], his servants, agents, and workmen, and every of them, to fell and cut down the said trees, at all reasonable and convenient times, and to lay and place the bark of the oak trees in convenient parts of the premises to dry; AND the said trees and wood, with the bark of the oaks, and the boughs, lops, and tops, of the whole of the said trees, to draw, remove, carry off, and take away in shares, in and by the most usual and convenient ways and parcels, at any time on or before the (*twenty-ninth*) day of (*September*), next: *And also* free liberty, power, and authority, to and for the said [*purchaser*], his executors, administrators and assigns, and his and their servants, agents, and workmen, and other person and persons to whom they shall sell and retail the said timber and wood, or any part thereof, to dig saw-pits, and break up and saw the said timber in proper and convenient parts of the said premises, in and upon which the said timber and wood stands and grows, at any time before the said (*twenty-ninth*) day of (*September*) next, without paying or making any satisfaction to the said [*vendor*], his heirs, assigns, or underte-

Power to cut and carry away timber.

Power to dig pits to saw timber on premises.

(*b*) Although on a grant or sale of trees, a right to cut them down and carry them away is implied by law, Noy's Maxims, 55, 9th ed. Plow. Com. 16. Finch's Law, 63. 11 Co. 52, a.; yet it is prudent to insert this provision, as it gives greater powers than the law would imply. See note *infra*, on WAYS OF NECESSITY.

nants. AND THE SAID [*purchaser*], in consideration of the premises, and the bargain and sale of the said trees and bark, made to him as aforesaid, *Doth* for himself, his heirs, executors and administrators, covenant, promise, and agree to and with the said [*vendor*], his executors, administrators and assigns, by these presents, that he the said [*purchaser*], his heirs, executors, or administrators, or some of them, shall and will well and truly pay or cause to be paid unto the said [*vendor*], his executors, administrators, or assigns, the sum of hundred pounds, of lawful money of Great Britain [and Ireland], in manner following, that is to say (*mention the days of payment*), without any fraud or delay in any wise: AND ALSO that he the said [*purchaser*], his executors, administrators, or assigns, shall and will fell, hew, and cut down the said oak, ash, and other trees, and every of them, and draw, remove, and take away the same, with the boughs, lops, tops, and bark thereof, within the time before limited and agreed on for that purpose, and according to the true intent and meaning of these presents: AND ALSO shall and will, within one month next after the said (*twenty-ninth*) day of (*September*) next, at his and their own costs and charges, fill up all such sawpits as shall for the purposes aforesaid have been made by him or his servants, on any of the said lands; *and also* fence, amend, and repair, all the hedges and fences in and about the said lands, in all such places as shall be broken, or otherwise damaged or destroyed, in felling, hewing, or carrying away the said timber, on being allowed by the said [*vendor*], hedge-wood for that purpose. AND *it is further agreed*, that if any dispute should arise between the said parties, touching any clause, matter, or thing relating to the sale of the said timber, the same shall be referred to and finally settled by two indifferent persons, one of whom to be chosen by each of the said parties; and if such two persons should not agree, then by an umpire to be chosen by them (*c*). IN WITNESS, &c.

PURCHASE OF GROWING TIMBER.

Covenant to pay purchase money on certain days.

Covenant by purchaser to cut down and remove timber, &c. by times agreed on.

To fill up saw pits,

and repair hedges.

Disputes to be referred to arbitration.

(*c*) If the vendor be tenant in tail, say,

"AND ALSO that if the said [*vendor*] should die before the

If tenant in tail die before removal, pur-

PURCHASE OF GROWING TIMBER.

chaser to have allowance.

said (*twenty-ninth*) day of (*September*) next, and the said [*purchaser*] should be prevented from felling, sawing, or carrying away the said timber, as aforesaid, then the executors or administrators of the said [*vendor*], shall pay or allow unto the said [*purchaser*], such sum of money, by way of damages, as he shall thereby sustain; the same to be ascertained by arbitration, or arbitration and umpirage, as aforesaid (*d*)."

(*d*) *Vide ante*, 189. (a).

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

AGREEMENT *for a* PARTITION *of* FREEHOLD, COPYHOLD, *or* LEASEHOLD *Premises in* POSSESSION, REMAINDER, *or* REVERSION; *where the Part which each is to take in Severalty, has been previously ascertained; and it is referred to Commissioners, or their Umpire, to determine the Sum to be paid, for Equality of Partition* (*a*). The most simple form.

(*a*) PARTITION,
may be effected by four different modes.

I. *By Conveyance*, &c.
II. *By Writ of Partition at Common Law.*
III. *By Bill in Equity.*
IV. *By Private Act of Parliament.*

PARTITION BY CONVEYANCE.

I. BY CONVEYANCE.

At common law.

At the common law, estates of freehold, either corporeal or incorporeal, could not be voluntarily partitioned by joint-tenants without a deed. Litt. s. 290. Co. Litt. 169, a. 187, a. Tenants in common, however, might have made a partition by parol without deed, if as to corporeal estates, they afterwards perfected the partition in severalty by livery of seisin, Co. Litt. 169, a.; and coparceners, whether of lands lying in livery or in grant, and although of lands situate in different counties, might have made a partition by parol without deed, Litt. s. 250. Co. Litt. 169, a.; and joint-tenants for years might have made partition by parol without a deed, Dyer, 350. b. pl. 20. Co. Litt. 187, a. *Vide* Roberts on Frauds, 283.

Since the statute of frauds.

Since the statute of frauds and perjuries, a *writing* is necessary to perfect a partition of lands among tenants in common or coparceners, though as to joint tenants in fee a *deed* is necessary now, because it was so at common law. Mr. Cruise, following Sir Wm. Blackstone, must be

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

mistaken when he says, "The statute of frauds has abolished this distinction, and made a *deed* equally necessary in all cases." 4 Cru. Dig. 96. s. 16. 2d ed. 2 Bla. Com. 324; and see *Johnson* v. *Wilson*, Willes, 248.

Proper conveyance from one joint-tenant to another, a release.

The proper mode of conveyance from one joint-tenant to another, and the most effectual to sever the joint-tenancy, either of the whole or part of the *immediate freehold* of lands, is a *release;* livery, or what is equivalent to it, not being necessary, because each has a *seisin* in every part, and in the whole, *per mie* et per tout.* Litt. s. 288. Hawk. Abr. Co. Litt. 271. 7th ed. Yet conveyancers, from an abundance of caution, generally adopt the lease and release, because that is the usual modern way of conveying real estates, whether the lease be necessary or not, and from a fear that the joint-tenancy might have been severed, to meet that case, by creating an estate by lease capable of being enlarged by release. However, the lease is rarely necessary.

Coparceners and heirs in gavel-kind, a release.

As coparceners, including heirs in gavel-kind, have, as well as joint tenants, privity of estate and possession, Co. Litt. 169, a. 175, b. 2. English Copyholder, 425. it seems the proper conveyance between them is a release. However coparceners may convey to each other, either by release or feoffment. Gilb. Ten. 73. Perk. s. 193. Harg. n. Co. Litt. 169, a. (2).

Tenants in common, lease and release.

But as tenants in common have only between them a privity in possession, and not in estate, Co. Litt. 169, a. they cannot release to each other the immediate freehold of lands, without previously creating an estate capable of enlargement by release, as by a bargain and sale for years, because a release by way of *mitter le estate,* supposes the releasee to have some estate in the whole of the lands released to him; but tenants in common, in supposition of law, have several distinct undivided freeholds in every part of the lands, and one of them cannot transfer any part to the other without livery of seisin, or what is equivalent to it. Co. Litt. 200, b. 3 Bac. Abr. 694. *Joint tenants,* &c. (1) 3. (2). Gilb. Ten. 73-4. Hawk. Abr. Co. Litt. 365.

Partition may be made of things lying in grant, as of a reversion, that one shall have the reversion of certain acres, and another shall

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Per mie et per tout.

* *Mie, mi,* or *my;* a contraction of *moitié,* the half, or one of several equal parts: *coæqua vel media pars.* Cowel, *Moyety. Et vide* Litt. s. 277. Kelham, *mi,* et *my.* When this became a technical expression, it is probable a joint tenancy was not usual between more than two persons; after it became common between three or more persons, the word *moitié* was retained, though in strict propriety in the latter instance *partie* should have been used instead.

have the reversion of other acres. F. N. B. 62. D. Co. Litt. 169. a. 16 Vin. Abr. 217. *Et vide* Fearne's posthumous works, as to severing a joint-tenancy of a vested remainder, 243.

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

Proper mode of conveying things in grant on partition.

As livery of seisin cannot be had of things lying in *grant*, the proper conveyance of *incorporeal* hereditaments, namely, advowsons, tithes, commons, ways, offices, dignities, franchises, and rents, and of the reversions and remainders of lands from one joint tenant to another, is a release; from one tenant in common to another, a grant; from one coparcener, or heir in gavel-kind, to another, either a release or grant. The existence of these incorporeal hereditaments is merely in idea and abstracted contemplation; though their effects and profits may be frequently objects of our senses: 2 Bla. Com. 20. *et vide* Co. Litt. 9, a. and a remainder or a reversion of lands being only a present right to future enjoyment of the possession, has in the same manner no existence but *in jure et intellectu.*

Where there were three joint tenants for life, and one of them by deed "granted, bargained, sold, assigned, set over, and confirmed" to another of them, all the right, estate, title, interest, claim and demand of the grantor, of and to the lands held in jointure, it was *adjudged* without argument, on special verdict, that this deed was sufficient to pass the part or share of the joint tenant who made the deed to the other to whom it was made. *Chester* v. *Willan*, 2 Saund. 96, a. And the Chief Justice said, that though the *jury* found, that he *granted*, yet the Court would adjudge that he *released*, which is the proper conveyance for one joint tenant to pass his estate to the other.

Equal partition by coparceners binds heirs in tail.

A partition of lands entailed between coparceners, if it be equal at the time of the partition, will bind the issue in tail. Co. Litt. 173. *b.*

Equal partition by husband and wife, she being coparcener in fee, binds her and her heirs:

The *husband* of a coparcener in *fee* simple, may make an *equal* partition of the estate in coparcenary in yearly value; but the wife must be a party to the partition, otherwise it will not bind her or her heirs. Bro. Abr. *Particion*, pl. 1. and 28. If the partition be unequal it will bind the husband, but it will be *voidable* by the wife or her heirs, after the husband's death, and consequently may be *confirmed* by the wife or her heirs after his death, by leasing or taking possession of the unequal part, receiving the rents, or doing any other act amounting to a confirmation of an estate which is not *void*, but voidable. Co. Litt. 170, b. 171, a. *Et vide* 4 Bac. Abr. 13, Gwill. ed. *Leases* (C.) 7 *Ibid*, 64. *Void and voidable.* Serjt. Williams's note, 2 Saund. 180, (9). 1 Roper, Husband and Wife, 93. Com. Dig. *Confirmation*, (A.) (D. 1). *Baron and Feme*, (S. 1). And a coparcener and her husband, may grant a rent in fee for equality of partition out of her part, if the partition be equal. Co. Litt. 169, b. And the reason of

and they may grant rent for equality of partition.

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

this anomaly, contrary to the general principles of the law, that a husband cannot do any act to affect the inheritance of his wife, Lord Coke says is, that husbands and wives are compellable by [the common] law to make partition; and that which they are compellable to do in this case by law, they may do by agreement without process of law; but it is contrary of joint-tenants, for they are in by purchase, and were not compellable by the common law to make partition, and therefore upon partition between them, a rent cannot be *reserved* for equality of partition. *Marshe* v. *Smith*, 1 Leon. 27.

Equal partition binds infant coparcener.

So an equal partition will bind an infant coparcener, because a writ of partition lies in such case at common law; Co. Litt. 171, a. but an unequal partition is *voidable*, either during infancy, or afterwards, yet it may be confirmed. Litt. s. 258. A prochein amy, or a guardian of an infant, can only make an equal partition to continue during the infancy. Bro. Abr. *Particion*, pl. 1. *sed vide* some loose cases *contra*, 2 Roll. Abr. 256, (E) pl. 1. 3. and 4. 16 Vin. Abr. 222. (E).

On partition by coparceners, tenants in tail, &c. nothing further should be done.

But in all these cases of partition, by deed taking effect under the principles of the common law, by tenants in tail, husband and wife in right of a wife seised in fee, and infants, who are *coparceners*, to make it binding, nothing more than a partition should be made; the course of descent should not be altered; the estate should not be conveyed to uses; a married woman or an infant should not thereby attempt to gain a power over the lands, to be executed during their disabilities, by a mere deed or writing.

Partition by deed, by joint-tenants, and tenants in common, governed by common law rules.

Partitions by deed, by tenants in tail, femes covert, and infants, who are joint-tenants, or tenants in common, are governed by the same rules as conveyances, or other acts done by them.

Consequently, to partition by deed the estate of a tenant in tail, or a married woman who is a joint-tenant or tenant in common, a fine or recovery is necessary to make it binding on the woman and her heirs, and on the heirs in tail. And to avoid the uncertainty of a possession depending on the doubtful circumstance, whether a partition was equal at the time of making it, even tenants in tail, and husband and wife seised in fee in right of the wife of an estate in coparcenary, should levy a fine, or suffer a recovery.

The act of an infant, not strictly authorized by law, is not to be depended on.

Implied warranty on partition by deed between coparceners.

Deeds of partition at common law between coparceners, have annexed to them a *warranty* in law for the benefit of the parceners and their heirs; Co. Litt. 174, *a.* 384, *a.*, to continue only while the privity of estate remains; therefore if one of the coparceners or her heirs, alien in fee any part of the lands allotted, the implied warranty ceases. *Vide* Litt.

s. 262. Co. Litt. 174, *a*. This implied warranty is not extended for the benefit of an assignee, either of part or the whole: Co. Litt. 384, *b*. 4 Co. 121, *b*., although the lands purchased by him would remain liable to the implied warranty, in favour of a coparcener or her heirs who had not alienedin fee, either part or the whole of her allottment: Noy's Maxims, 25, 61, 5th ed. 78. 156, 9th ed. *Bustard's* case, 4 Co. 121, b. but it seems that if in either of these cases, the alienation had been only of part of the *estate*, as for years, life, or in tail, then on account of the reversion in fee remaining, the implied warranty would continue. *Vide* Co. Litt. 173, *b*. as to *eviction* for these estates.

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

In all partitions by deed, between other persons, and also between coparceners, when it is effected by means of a joint conveyance to uses on the seisin of a stranger, there is no implied warranty : and therefore it is usual to insert mutual covenants for the title against the acts of the partitioners, and the person under whom they claim ; but in order to give a recompense in value, in case of eviction by a title paramount, there should be *general* covenants against all mankind. *Vide* 4 Cru. Dig. 96, 434. 2d ed. *et vide* the note on warranty.

No implied warranty on partition by conveyance to uses.

A *parol agreement* for a partition, put in execution, and acquiesced in for a long time, will be enforced by a Court of *Equity*, if the persons who made the agreement had a right to contract; but an agreement for a partition, by the husband of a joint tenant, and consequently of a tenant in common in fee, will not bind the inheritance of his wife. *Ireland* v. *Rittle*, 1 Atk. 542. or of a coparcener, unless she be a party to it. Co. Litt. 169. b. Mr. Hargrave, n. Co. Litt. 171, a. (2), seems to have mistaken *Ireland* v. *Rittle*. The doctrine of Littleton and Lord Coke, only extends to coparceners.

Parol agreement for partition.

A parol partition between tenants in tail, has been decreed to bind the issue in tail. 2 Vern. 233.

And a parol partition by the guardian of an infant tenant in common, who confirmed it by granting leases of the entirety of his allotment after he came of age, and acquiesced in it for seventeen years, and the lessees of the other tenant in common having made improvements on the faith of the title being in severalty, raises an equity which will prevent the interposition of the court, to disturb what has been done. And the plaintiff is not entitled to a commission for a partition, but only to a conveyance in pursuance of the parol partition. *Whaley* v. *Dawson*, 2 Sch. and Lef. 367.

A *settlement of undivided shares* of freehold, leasehold, or copyhold lands, should always contain, as well as the usual powers of sale and exchange, a *power to make a partition ;* and it should enable the trustees to raise any money which may be payable, for equality of

Powers in settlement of undivided shares.

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partition, by sale or mortgage of the property: and that if money should be received by way of equality, the power should authorise the trustees to lay it out in the purchase of lands, &c. to be settled to the same uses.

A power of sale is not well executed by a mere partition. *M' Queen* v. *Farquhar*, 11 Ves. 447.

Quære.

It is *vexata questio*, whether a power of exchange in the usual form authorises a partition.

Where the power was "to make sale of, and to convey, surrender, and assure to, or convey in exchange, for or in lieu of *other* manors, lands, and hereditaments, the said undivided third part of all or any of the said freehold and copyhold lands, to any person, either together or in parcels, for the best price, &c. in money, or *such other equivalent interest* in manors, lands and hereditaments," as should to the trustees seem proper, the lords commissioners inclined to think, and afterwards Lord Rosslyn determined, that the power authorised a partition. *Abel* v. *Heathcote*, 4 Bro. C. C. 278. 2 Ves. jun. 98. S. C. Mr. Fearne thought the power authorised a partition, on the ground that the partition was in *effect* an exchange. Sug. Pow. 467. 2d ed.

In *M' Queen v. Farquhar*, 11 Ves. jun. 473. Lord Eldon, on the first hearing, said, "according to the reason appearing to be given by the lords commissioners, one [*qu.* a] power of sale will exclude [*qu.* include] every other power of exchange, partition, &c. It is clear, the converse would not hold. A power to make partition would not include a power to sell, and I think a power of exchanging would not:" on the second hearing, he *doubted* whether a power to exchange is well executed by a partition, 476.

In the *Attorney General* v. *Hamilton*, 1 Madd. Rep. 214, Sir Thomas Plumer inclined to Lord Eldon's opinion, and doubted whether a power "to sell or convey in exchange," authorised a partition. Lord Eldon, 11 Ves. 475, says, "that on a conveyance to uses, with a power to alter the uses by an instrument, the terms and limitations of which are prescribed by the general law, the new use will not arise except under the very circumstances in which it is contracted that it shall arise."

It seems a power to exchange does not authorize a partition.

Upon the whole it seems, *Abel* v. *Heathcote* cannot be supported either under the power of sale, exchange, or the particular wording of the power; at least it is a very doubtful authority: but the question, whether a *power of exchange* can be executed by a partition, still remains untouched by actual decision. By attending to the reasoning of Lord Eldon in *M' Queen* v. *Farquhar*, 11 Ves. 467. there seems to be little doubt, that, whenever the point calls for a decision, it must be determined that it cannot be so executed. *Et vide* Sug. Pow. 2d ed. 468. 3d ed. 474. Eden's note, 4 Bro. C. C. 285.

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Lord Rosslyn, 2 Ves. jun. 4 Bro. C. C. 285, *Abel* v. *Heathcote*, says, "If any person had been ingenious enough to think of this objection at the time of the partition, by making the trustees sell, receive the money, and buy a third of the same estate, the whole would have been within the words of the power." Yet this fictitious proceeding would be against the rule, that no act can be done by circuity which cannot be done directly.

Commissioners under inclosure acts, may make allotments in severalty to joint-tenants, or tenants in common.

The general Inclosure Act, 41 Geo. III. c. 109. s. 16. after reciting that "it may happen, that some of the proprietors of messuages, cottages, tenements, or lands, in any such parish or manor, and persons entitled to allotment or allotments, to be made by virtue of any such act, may be seised thereof or entitled thereto in joint tenancy, or as coparceners, or tenants in common, and cannot by reason of infancy, settlement, or absence beyond seas, make an effectual division thereof;" enacts, "that it shall be lawful for any such commissioner or commissioners, and he or they is and are hereby authorised and empowered (upon the request in writing of such joint tenants, or coparceners, or tenants in common, or any or *either* of them, or of the husbands, guardians, trustees, committees, or attornies of such as are under coverture, minors, lunatics, or under any other incapacity as aforesaid, or absent beyond seas) to make partition and division of the messuages, cottages, tenements, lands and allotment, or allotments, to such of the said owners or proprietors, who shall be entitled to the same, as joint tenants, coparceners, or tenants in common, and to allot the same accordingly to such owners and proprietors in severalty; and from and immediately after the said allottments shall be so made and declared, the same shall be holden and enjoyed by the person or persons to whom the same shall be allotted in severalty, in such and the same manner, and subject to such and the same uses, as the undivided parts or shares of such estates would have been held, in case such partition and division had not been made."

Conveyances to uses seem the best mode to effect a partition of freehold or inheritance.

To effect a partition of estates of *freehold or inheritance*, whether in possession, or in remainder or reversion, the best method, because the operation and effect of the lease and release are so well understood, seems to be for all the joint-tenants, tenants in common, coparceners, or heirs in gavel-kind, to convey by lease and release, the particular part allotted to each, by a separate deed to a trustee, to the use of the particular person, or to uses to prevent dower. The trustee is a mere conduit pipe, and there is no need of his joining in any future conveyances; the uses are fed by his seisin, and are executed immediately into a legal estate by the statute of uses: or in more simple terms, the possession of the trustee is drawn to and drowned in the use by virtue of the statute.

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

It may be made by one lease and release.

Another method is, for all of them to convey the entirety to a trustee, by lease and release, and by the release to limit the several particular parts allotted to each, to his use or to uses to prevent dower. In this case, the conveyance must necessarily be rather long, and there should be as many parts of the lease and release as there are partitioners, or at least each should have an attested or common copy of the lease and release, and they should take a covenant for production of the originals by the person who keeps them. Or otherwise, the deeds should be acknowledged by *all* the partitioners, and enrolled; because a copy of the enrollment is not evidence of a bargain and sale for years, or of the contents of any other deed enrolled for safe custody, except as against the party acknowledging the deed; though against such party, and against all claiming under him, a copy of the enrollment of any deed is admissible in evidence. An examined copy of the enrollment of a bargain and sale of *freehold* in lands and hereditaments, is as good evidence as the original itself. 27 Hen. VIII. c. 16. 10 Anne, c. 18, s. 3. See 14 East, 231. *Hobhouse* v. *Hamilton*, 1 Scho. & Lef. 207. Phillips Evid. 499, 4th edit. Gilb. Evid. 87, Sedgw. ed. Bull. N. P. 256. A bargain and sale would not do, where the uses of all the lands are declared by one deed from a joint operative part by the whole of the partitioners, because a man cannot sell to himself; which each party would do in that case, to the extent of his proportionate part in the share allotted to him: besides uses cannot be declared on a bargain and sale, because a use cannot be raised on a use; and a bargain and sale itself only transfers a use to be executed into legal estate by enrollment, provided it be done within six lunar months from the date. Gilb. Uses, 99. 295. and therefore any uses declared in the deed on the seisin of the bargainee would be mere trusts, which would also be the case if the release above mentioned were inrolled in order to be pleaded and used as a bargain and sale.

Deeds acknowledged and enrolled, when evidence.

Partition cannot be made by one bargain and sale.

Wives of joint tenants are not dowable.

The wives of joint tenants are not dowable, because their husbands have not a sole seisin. Litt. s. 45. Co. Litt. 37, b. Hargr. n. Co. Litt. 35, a. (1). Gilb. Uses, 404. 1 Roll. Abr. 676, (G) pl. 4. For the same reason, if a husband joint-tenant, make a feoffment or other conveyance of his part to a stranger, his wife will not be dowable of it. F. N. B. 150. K. Co. Litt. 31, b. *et* n. (4). Yet if the husband on a partition, acquire a sole seisin of the *legal* estate of freehold and inheritance in his part, his wife will become dowable of it: to avoid which, the partition should be to uses, to prevent dower. But if the husband's estate in severalty be only an *equitable* or trust estate, as on an agreement for a partition, the wife will not be dowable, because a modern trust is the same as a use at common law, of which it appears from the recital

in the statute of *uses*, 27 Hen. 8, c. 10. and the old books, that a widow was not dowable. Perk. s. 349. Dyer, 266, a. pl. 6. 4 Rep. 1, b. 3 P. Wms. 234. 1 Eden. 196. Yet a husband is allowed curtesy of a trust, contrary to the common law. Perk. s. 457. *Vide* as to dower and curtesy of trusts, 2 Bla. Com. 132, 337. Christ. ed. Butl. n. Co. Litt. 208, *a.* (1). 2 Pow. Mortg. 718, 4th ed. 2 Fonbl. Treat. Equity, 99, 5th ed. Bk. 2, ch. 4, s. 1. 2 Watk. Cop. 79. Sug. n. Gilb. Uses, 25, (4). 1 Cru. Dig. 488. 3 Cru. Dig. 446, 450, 460. *Burgess* v. *Wheate*, Bla. Rep. 121. 1 Eden. 177, S. C. 1 Rop. Husb. and Wife, 352. Noy's Max. 94. 9th ed.

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Curtesy but not dower of a trust.

The wives of tenants in common, Litt. s. 45. coparceners, 2 Cru. Dig. 520. and heirs in gavel-kind, Co. Litt. 33, *b.* 111, *a.* Robinson's gavel-kind, 159, 2d ed. are dowable, of the shares of their husbands. On a fair and equal partition made by the husband of a tenant in common, coparcener, or heir in gavel-kind, his wife would only be dowable of the part received on partition; yet an unequal partition would be voidable *quoad* her dower. To prevent this question, it is advisable for the husband and wife to levy a fine of their part, or if it be an estate tail, to suffer a recovery. Sometimes, when a fine or recovery is necessary for any part of the lands, the whole of the partitioners and their wives join in a fine or recovery of the whole of the lands. A deed to lead, or a declaration of the uses of the fine, may be made either by one deed as to the whole, or as to the particular part of each by a separate deed: a lease and release would not be at all necessary, because the fine alone is a conveyance, though some persons in such a case make a lease and release, and declare the uses by the release. The tenant to the *præcipe* for suffering a common recovery, may, as in other instances, be made either by fine, feoffment, lease and release, bargain and sale, enrolled within six months, whether before or after the recovery, or by grant, if there be a previous estate for years subsisting: 5 Cru. Dig. 352. 2d ed. Cru. Recov. 64. 2d. ed. but on a partition, a bargain and sale inrolled is preferable. A husband seised jointly with his wife, or by moities or entireties, or seised only in right of his wife, may make the tenant to the *præcipe* of a legal or equitable recovery of the lands, without his wife joining; *Hollet* v. *Sanders*, 3 Lev. 108. *Robinson* v. *Comyns*, Cas. Temp. Talb. 167. Pig. Recov. 72. 5 Cru. Dig. 355. Cru. Recov. 52. 2d ed. 1 Cas. & Opin. 436. 2 *Ib.* 132. Butl. n. Co. Litt. 325. b. (2); but the wife or her heirs will not be bound unless she be vouched. Where lands are settled to the *separate use* of the wife, she alone may make the tenant; though it is more usual in that case for the husband to join, as in *Burnaby* v. *Griffen*, 3 Ves. 267. 271. 275.

Wives of tenants in common, coparceners, and heirs in gavel-kind, are dowable.

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

Assignment of attendant terms on partition.

Where there is an attendant term of the lands, it may be assigned by the direction of all the parties, by separate deeds to separate trustees, as to, for, and concerning the part allotted to each *in trust* for him, &c. according to the uses of the separate conveyance in fee to him. Or it may be wholly assigned by one deed, with separate declarations of the trust, as above; or when the property is of small value, a general declaration, according to the uses, trusts, estates, and interests, declared, &c. by the conveyance in fee of the whole. In either case, the above observations, as to one deed or separate deeds, copies and inrollment, equally apply. See a Form, *infra*.

Partition of copyhold should be with lord's consent.

It is said that parceners of *copyhold* cannot make partition without the lord's license. Hal. MS. Co. Litt. 59, a. (1). but at the end of Calthorpe's Read. 98, it is said, that it was agreed in the Duchy chamber, that if two joint-tenants, copyholders in fee, make partition, it is good, and no forfeiture nor alienation. 2 Watk. Cop. [194] (e).

However, an *agreement* to divide copyhold lands will not operate as a partition, and cannot be enforced in a Court of Equity, if it be made without the privity of the lord; nor can a defendant claiming under an entail of a copyhold, be compelled to substantiate such an agreement by a preceding tenant in tail. *Oakly* v. *Smith*, Ambl. 368. 1 Eden. 261. 1 Madd. Ch. 248, 2d ed.

The proper mode of perfecting a partition of copyholds, is a surrender, and admission thereupon, which of course is with the consent of the lord. When the parties are tenants in tail, the customary mode of barring the entail should be followed, as by a customary recovery, or a surrender. [There appears to be no mode of compelling a partition of a joint tenancy, coparcenary, or tenancy in common of copyholds, except by special custom. *Scott* v. *Fawcett*, Dick. 299. *Oakly* v. *Smith*, *supra*. And see 2 Coventry's Watk. Cop. 151, where the authorities are ably discussed. *Ed.*]

PARTITION BY WRIT.

II. By writ of partition.

What.

Partition may be effected by a *partitione* facienda*, which is a writ

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* It is called *participatione* in the 31 Hen. VIII. c. 1. s. 2. by mistake, and therefore *partitione* is understood.

of partition, to compel those who hold lands in common, *insimul et pro indiviso* [jointly and undividedly], to divide the lands in severalty by metes and bounds, as coparceners and heirs in gavel-kind, at the common law. Bract. 71, b. Litt. s. 247. 265. Fitzherbert's N. B. 62. Robinson's Gavel-kind, 105, 2d ed. Cowel, *Partition*: joint tenants and tenants in common, of an estate or estates of inheritance, in their own right, or in the right of their wives, of any manors, lands, tenements or hereditaments, within England, Wales, or the marches of the same, and every of the said joint tenants, or tenants in common, and their *heirs*, after such partition made [by writ], shall have aid of the other or of their *heirs*, to the intent to dereign the warranty paramount, and to recover for the rate, [*pro rata*, Co. Litt. 174, a.] as is used between coparceners after partition, made by the order of the common law, by the statute 31 Hen. VIII. c. 1 :—joint tenants, and tenants in common, who hold jointly or in common for term of life, year or years, or joint tenants or tenants in common, where one or some of them have estate or estates for term of life or years, with the other who have estate or estates of inheritance or freehold in any manors, lands, tenements or hereditaments, by the statute 32 Hen. VIII. c. 32; but, aid and recovery *pro rata*, are not mentioned in the latter statute.

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For whom it lies.

It lies by one coparcener against another, or by one against three, or two against two, if there be four, and so against all the others who will not consent, by those who do consent. Litt. s. 247. It does not lie *for* tenant by the curtesy, Reg. 76. b. *Tenet* always implies a tenant of the freehold; and therefore if one of the coparceners make a lease for life, it cannot be brought against him for that land; because in that case, they do not hold *insimul et pro indiviso*, and then the writ must be against the tenant of the freehold, 4 Hen. VII. 9 Co. Litt. 167. It lies *against* tenant by the curtesy, but to have it perpetual he must pray in aid of the heir in reversion. Reg. 76. b. Booth's Real Actions, 244. *Vide* 3 Bac. Abr. 699. *Joint-tenants*, &c. (1) 7.

By whom.

The process in this action, is summons, attachment, and distress infinite. F. N. B. 62. M. Aid lies in this action, which may be counterpleaded, and if it be found against the defendant, it is peremptory, *quod partitio*, &c. Booth's Real Actions, 245. *Contra* as to aid. 1 Roll. Abr. 162. *Aid* (A) pl. 28, 29. The tenants may have several essoins, every one, one essoin, as in other real actions, though no land be demanded. Hob. 8. Booth, 245. 16 Viner. Abr. *Partition* (R.) 232. *Vide* Com. Dig. *Pleader* (3 F).

Process.

Aid.

Essoin.

There are two judgments, the first, that the partition shall be made, viz. *quod partitio fiat inter partes prædictas de tenementis prædictis cum pertinentiis*. And upon this there goes out a judicial writ to the

First judgment.

Inquisition.

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

sheriff, to make partition; which recites first, the writ of partition and judgment, and then commands the sheriff, together with twelve men of the vicinage, &c. to go in person to the lands to be divided, and there, in presence of the parties, if they appear on summons to be made, by the oaths of those twelve men, to make an equal and fair partition, and allot to each party their full and just share, and then return the inquisition of the partition annexed to the writ, under the seals of the sheriff and the jurors; whose names are likewise to be returned. Booth's Real Act. 244. Lit. s. 248. 2 Cru. Dig. 507, 2d ed.

Second judgment.

When the inquisition is thus returned, on motion made to the court, the second judgment is given in this manner:—*Ideo consideratum est per curiam quod partitio prædicta firma et stabilis in perpetuum teneatur, &c.* Co. Litt. 169. *a.* 1 Bac. Abr. 699.

In a writ of partition, if the judgment be given *quod partitio fiat*, and thereupon a writ is directed to the sheriff to make partition, no writ of error lies, because the judgment is not complete till the sheriff's return, and the second judgment, which the law requires; for, before that, the plaintiff may be nonsuited, or he may upon the return of the sheriff, suggest to the court that the partition is not equal, and so have a new partition; and may also release before the last judgment. *Berkeley* v. *Warwick*, Cro. Eliz. 635.

If after awarding the judicial writ, and before the return of it, the defendant dies, yet the partition is good, and the writ shall not abate; because, before the death of the defendant, judgment ought to be given that partition should be made; and though, upon the return of the judicial writ there is another judgment given, yet that is in confirmation of the first judgment. It seems, likewise, that upon the return of the judicial writ, no exception can be taken to it; therefore it is not material, whether the defendant be dead or alive then, since he can have no advantage by any plea on the return of the writ. Cro. Eliz. 636. Dal. 59.

If the writ be brought by one joint-tenant against several, and there happen to be error in the execution of it, and one of the defendants releases all errors to the plaintiff, this shall not bar the others; for each having a distinct interest, shall not be prejudiced by the release of his companion. *Yate* v. *Windham*, Cro. Eliz. 64.

In this writ of partition may be demanded the view of frankpledge, together with a manor; for though it be not severable of itself, nor partible, yet the profits thereof may be divided, or it may be divided thus: that the one shall have it at one time, and the other at another; also being demanded within the manor, it may be entirely allotted to one, and the land in recompence to another. *Moor* v. *Onslow*, Cro. Eliz. 759. 2 Cru. Dig. 508. 2d ed.

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

The statute 8 and 9 Will. III. c. 31. made perpetual by the statute 3 and 4 Ann, c. 18. s. 2, after reciting that "the proceedings upon writs of partition between coparceners, by the common law or custom, joint-tenants, and tenants in common, are found by experience to be tedious, chargeable, and oftentimes ineffectual, by reason of the difficulty of discovering the persons and estates of the tenants of the manors, messuages, lands, tenements, and hereditaments, to be divided; and the defective or dilatory executing and returning of the process of summons, attachment, and distress, and other impediments, in making and establishing of partitions; by reason of which, divers persons having undivided parts, or purparts, are greatly oppressed and prejudiced, and the premises are frequently wasted and destroyed, or lie uncultivated and unmanured, so that the profits of the same are totally, or in a great measure lost; for remedy whereof" enacts, "That after process of *pone*, or attachment returned upon a writ of partition, affidavit being made by any credible person, of due notice given of the said writ of partition, to the tenant or tenants to the action, and a copy thereof left with the occupier or tenant or tenants, or if they cannot be found, to the wife, son, or daughter, being of the age of one and twenty years, or upwards, of the tenant or tenants, or to the tenant in actual possession, by virtue of any estate of freehold, or for term of years, or uncertain interest, or at will, of the manors, &c. whereof the partition is demanded, (unless the said tenant in actual possession be demandant in the action,) at least forty days before the day of return of the said *pone*, or attachment; if the tenant or tenants to such writ, or any of them, or the true tenant to the messuages, &c. as aforesaid, shall not in such case, within fifteen days after return of such writ of *pone*, or attachment, cause an appearance to be entered, in such court where such writ of *pone* or attachment shall be returnable; then in default of such appearance, the demandant having entered his declaration, the court may proceed to examine the demandant's title, and quantity of his part, and purpart, and accordingly as they shall find his right part and purpart to be, they shall for so much give judgment by default, and award a writ to make partition, whereby such proportion, part, and purpart, may be set out severally; which writ being executed, after eight days notice given to the occupier or tenant, or tenants of the premises, and returned, and thereupon final judgment entered, the same shall be good, and conclude all persons whatsoever, after notice as aforesaid, whatever right or title they have or may at any time claim to have in any of the manors, &c. mentioned in the said judgment and writ of partition; although all persons concerned are not named in any of the proceedings, nor the title of the tenants truly set forth."

After process of *pone*, or attachment returned.

If tenant do not enter appearance within fifteen days, court may proceed to examine defendant's title,

give judgment by default, and award writ to make partition.

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

If tenant or other shall in one year after judgment entered, or in case of infancy, &c. shew good matter in bar of such partition, &c. court may set aside judgment.

Sect. 2. "That if such tenant or person concerned, or either of them, against whom, or their right or title, such judgment by default is given, shall within the space of one year after the first judgment entered, or in case of infancy, coverture, *non sanæ memoriæ*, or absence out of the kingdom, within one year after his, her, or their return, or the determination of such inability, apply themselves to the court by motion where such judgment is entered, and show a good and probable matter in bar of such partition, or that the demandant hath not title to so much as he hath recovered; then in such case the court may suspend or set aside such judgment, and admit the tenant and tenants to appear and plead, and the cause shall proceed according to due course of law, as if no such judgment had been given; and if the court upon hearing thereof, shall adjudge for the first demandant, then the said first judgment shall stand confirmed, and be good against all persons whatsoever, except such other persons as shall be absent or disabled as aforesaid;

Person appealing to pay costs.

and the person or persons so appealing shall be awarded thereupon to pay costs; or if within such time or times aforesaid, the tenants or persons concerned, admitting the demandant's title, parts, and purparts, shall show to the court an inequality in the partition, the court may award a new partition to be made, in presence of all parties concerned, (if they will appear), notwithstanding the return, and filing upon record the former; which said second partition, returned and filed, shall be good and firm for ever, against all persons whatsoever, except as before excepted."

No plea in abatement to be admitted.

Sect. 3. "That no plea in abatement shall be admitted or received, in any suit for partition, nor shall the same be abated by reason of the death of any tenant."

Where high sheriff cannot be present at execution of judgment, under sheriff, in presence of two justices, may proceed thereupon.

Sect. 4. "That when the high sheriff, by reason of distance, infirmity, or any other hindrance, cannot conveniently be present at the execution of any judgment in partition; in such case the under sheriff, in presence of two justices of the peace of the county where the lands, tenements or hereditaments to be divided do lie, shall and may proceed to execution of any writ of partition, by inquisition in due form of law, as if the high sheriff were then personally present; and the high sheriff thereupon shall, and is hereby enabled and required to make the same return as if he were personally present at such execution. And in case such partition be made, returned and filed, he or they that were tenant or tenants of any of the said messuages, &c. or any part or purpart thereof, before they were divided, shall be tenant or tenants for such part, set out severally to the respective landlords or owners thereof, by and under the same conditions, rents, covenants and reservations, where they are or shall be so divided; and the landlords and owners of the several parts and purparts, so divided and allotted as aforesaid, shall

Tenants before the division, to be tenants under the same conditions, &c. and landlords to make good to tenants their parts, as before partition.

warrant and make good unto the respective tenants, the said several parts severally, after such partition, as they are or were bound to do, by any copy, leases, or grants, of their respective parts, before any partition made. And in case any demandant be tenant in actual possession to the tenant to the action, for his part and proportion, or any part thereof, in the messuages, &c. to be divided by virtue of a writ of partition as aforesaid, for any term of life, lives, or years, or uncertain interest, the said tenant shall stand and be possessed of the said purparts and proportions for the like term, and under the same conditions and covenants, when it is set out severally, in pursuance of this or any other act, statute, or law to that purpose."

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In a *writ* of *partition*, a rule to show cause was granted, and afterwards made absolute, on affidavit of service, for the Court to proceed to examine the title of the demandant; process having been duly returned, the declaration entered, and no appearance entered by the tenant within fifteen days: the Court, on making the rule absolute, appointed to proceed on the examination in open court on the next day. Accordingly, Serj. Walker, for the demandant, opened his title, of which abstracts had previously been left with the judges; it fortunately proved not to be very intricate. The several seisins, descents, devises, and conveyances, were proved by *affidavits*. The deeds and wills were *produced* and read; and no counsel appearing for the tenant, the Earl of Thanet, judgement on his default was given for the demandant, to hold in *severalty* the premises demanded in his count; in some of which he was seised of two undivided third parts, and in others of a moiety only, in common with Lord Thanet. And a writ of partition was awarded.

Proceedings on default of tenant.

In a subsequent term the sheriff returned that he had executed the same, in the presence of persons who attended for the plaintiff and defendant respectively; and specified in his return the several parcels, with their metes and boundaries; hereupon, Walker, for the plaintiff, moved for final judgement, *quod partitio sit stabilis*. The rule for which was made absolute the last day of the term, on affidavit of notice to the defendant and the tenants in possession. *Halton* v. *Thanet*, 2 Wm. Bla. Rep. 1134, 1159.

It has been lately held, that the statute 8 & 9 Will. III. c. 31. applies only to those cases where the tenant does not appear. *Dyer* v. *Bullock*, 1 Bos. & Pul. 344.

The statutes enforcing partition do not extend to *copyholds*, because this alteration of the tenure might prejudice the lord without his consent; and because these acts provide, that it shall be done by writ of partition; and copyhold lands are not impleadable at common law. Co. Copyh. s. 54. Tracts, 125. Gilb. Ten. 185. 6 Vin. Abr. 171, pl. 19; nor are *customary* estates within those statutes. *Burrell* v. *Dodd*, 3 Bos. & Pul. 378. [& 202, *ante*.]

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

Notwithstanding the courts of common law are now rarely resorted to for obtaining a partition of estates, yet as a rule of Courts of Equity is *æquitas sequitur legem*, it has been thought proper on that account, to state at some length, the leading points of the proceedings at law, and in order to give a more complete view on the whole subject.

PARTITION BY BILL.

III. By Bill in Equity.

Advantages of equitable jurisdiction.

It has been shown that remedy may be obtained in the courts of common law for the partition of estates; yet they have a difficulty of proceeding to the full extent of justice; and if the titles of the parties are in any degree complicated, it is extremely difficult to proceed in those courts: and where the tenants in possession are seised of particular estates only, the persons intitled in remainder cannot be bound by the judgment in a writ of partition. Mitford's (now Lord Redesdale's) Pleadings, 2d ed. 110. On these considerations, and the almost constant necessity the parties have for a *discovery*, is founded this branch of EQUITABLE JURISDICTION; in the exercise of which, courts of equity are constantly governed by an anxious attention to the legal title of the plaintiff: for though, at law, it be sufficient to allege seisin, yet, in equity, the plaintiff must shew his title. *Cartwright* v. *Pulteney*, 2 Atk. 380. But the title may be defeasible. *Wills* v. *Slade*, 6 Ves. 498. 1 Fonbl. Treat. Equity, E. 21, 5th ed. The commission issued by a court of Equity, is much more convenient than the writ; the valuation of the proportions is much more considered; the interests of all the parties are much better attended to; and it is a work carried on for the common benefit of both. *Calmady* v. *Calmady*, 2 Ves. jun. 570. (*a*)

A court of equity issues a commission of partition, on account of the extreme difficulty attending the process of partition at law, where the plaintiff must prove his title as he declares, and also the titles of the defendants; and judgment is given for partition according to the respective titles so proved; which is attended with so much difficulty, that by analogy to the jurisdiction of a court of equity, in the case of *Dower*, a partition may be obtained by bill. *Agar* v. *Fairfax*, 17 Ves. 552. 2 Madd. Cha. 244, 2d ed.

Equity makes partition by commissioners.

It is a thing of constant occurrence for joint tenants, tenants in com-

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[(*a*) On a bill for partition, the Court will also direct an account. *Lorimer* v. *Lorimer*, 5 Madd. 363. The legal title must be before the Court, and conveyances must be made after the portions are set out.

Adverse titles.

Where parties claim by distinct and adverse titles, there can be no partition between them, and the same rules prevail at law and in equity. *Miller* v. *Warmington*, 1. Jac. & W. 493. *Ed.*]

mon, coparceners, or heirs in gavel-kind, to file a bill in the Court of Chancery, praying for a partition of the estate; in which case it is usual for the court to issue a commission for that purpose, to certain persons, who proceed to divide the estate without a jury, and make their return to the Court. If not objected to by any of the parties, the Court will decree the performance of such partition, and direct the parties to execute proper conveyances to each other of the shares allotted to them. 2 Cru. Dig. 512. 2d ed. Hargr. n. Co. Litt. 169. a. (2). Redesdale's Pleadings, 97. 3d ed.

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The jurisdiction in these cases, is not exercised under the authority of any act of parliament, *Agar* v. *Fairfax*, 17 Ves. jun. 552. but appears to have arisen in *consequence* of the act of the 32 Hen. VIII. which makes one tenant in common accountable to the other; so that since the statute, they are become, in a manner, trustees the one to the other. So said in argument, 1 Vern. 421.

Origin of equitable jurisdiction.

Mr. Hargrave, in a note to Co. Litt. 169. a. (2), after having stated with his usual clearness and elegant precision, the different modes of partition in our own law, and made references to works on the subject in the English, civil, and Scotch laws, with which the English lawyer would do well to be acquainted, says, how far this branch of equitable jurisdiction so trenching upon the writ of partition, and wresting from a court of common law its antient exclusive jurisdiction over this subject, might be traced by examining the records of Chancery, I know not. But the earliest instance of a bill of partition I observe to be noticed in the printed books, is a case of the 40 Eliz. in Tothill's Transactions in Chancery, title *Partition* (155. ed. 1820). According to the short report of this case, the court interposed from necessity, in respect of the minority of one of the parties, the book expressing, that on that account he could not be made party to a writ of partition; which reason seems very inaccurate; for, if Lord Coke is right, that writ doth lie against an infant, and he shall have his age in it, and after judgment he is bound by the partition. Co. Litt. 171. b. But probably in Lord Coke's time, this was a rare, and rather unsettled mode of compelling partition; for I observe in a case in Chancery of the 6 Cha. I. which was referred to the judges, on a point of law between two coparceners, that the judges certified for issuing a *writ of partition* between them, and that the court ordered one accordingly, which I presume would scarce have been done, if the decree for partition, and a commission to make it, had then been a current and familiar proceeding with Chancery. 1 Cha. Rep. 49. However, it appears by the language of the Court in a very important cause, in which the grand question was, whether the Lord Chancellor here, could hold plea of a trust of lands in Ireland, that in the reign of James the second, bills of partition were become common. 1 Vern. 421. 2 Cha. Cas. 189.

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Mr. Fonblanque does not appear quite satisfied with Mr. Hargrave's observations, and has a note on this subject. 1 Treat. Equity, 18. 5th ed.

In the 14 Car. 2. *Martyn* v. *Perryman*, Chan. Rep. 235. a partition was decreed, notwithstanding Femes Covert and Infants, as well as Incumbrancers, were concerned. In the reign of *James* II. they were become frequent, 1 Vern. 421. 2 Ch. Ca. 189. and in that of his successors William and Mary, the chancellor observed, "he did no more question the jurisdiction of the chancellor in these cases, than he did whether a gift to a man and his heirs were a fee-simple." *Manaton* v. *Squire*, 2 Freem. 26. 1 Madd. Ch. 244, 2d ed. [And see *Miller* v. *Warmington*, 1 Jac. and Walk. 493.]

Quære whether equitable partition be matter of right.

It has been said, that a decree for a partition is a matter of *right*, and that there is no instance of not succeeding in it, except where no proof is adduced of a title in the plaintiff. *Parker* v. *Gerard*, Ambl. 236. 1 Ves. and Bea. 554. and *vide* Supp. Vin. Abr. 5 vol. 338. On the other hand, it has been observed, that as a plaintiff has a legal title, it is *discretionary* in the court, whether they will grant a partition or not; and where there are suspicious circumstances in the plaintiff's title, the court will leave the party to law. *Cartwright* v. *Pulteney*, 2 Atk. 380. and see *Scott* and *Fawcett*, 1 Dick. 299, and *Baring* v. *Nash*, 1 Ves. and Bea. 556—7. The plaintiff must, it appears, state upon the record his own title to a moiety. *Cartwright* v. *Pulteney*, 2 Atk. 380. and the titles of the defendants: and the better to enable the plaintiff to obtain a judgment for partition, the court will direct inquiries to ascertain who are with him entitled to the property. *Agar* v. *Fairfax*, 17 Ves. 552. *Calmady* v. *Calmady*, 2 Ves. jun. 570. [And see 202, *ante*.]

Every part of the estate need not be divided.

On a partition, *every part* of the estate need not be divided. If there be three houses, it would not be right to divide each house, for that would be to spoil them; but some recompence is to be made, either by a sum of money, or rent, for equality of partition, to those who have the houses of the least value. *Earl of Clarendon* v. *Hornby*, 1 P. Wms. 446. 2 Cru. Dig. 539. 2d ed. But if there be but *one* house, there may be a decree for the *partition* of it, though it would be highly inconvenient to the parties. *Turner* v. *Morgan*, 11 Ves. 143. and see 1 P. Wms. 447; and where exceptions were taken to the report of commissioners, for the partition of a house among joint-tenants, one party complaining that she could not get to her division except by going up stairs, which stairs were allotted to another person, the chancellor would not interfere. *Anon.* MS. And where the bill was for a partition of a *Cold Bath*, it was decreed. *Warner* v. *Baynes*, Ambl. 589. S. C. alluded to in *Parker* v. *Gerard*, Ambl. 236. So it is, if there be but one *Mill*, or an *Advowson*, to be divided; (as to partitions of an advowson, see *Bodicoate* v. *Steers*, 1 Dick. 69. *Matthews* v. *Bishop of Bath*

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and Wells, 2 Dick. 625.) but it is different where there are other lands, which may make up the share. *Turner* v. *Morgan*, 11 Ves. 143. and see 1 P. Wms. 447. A partition was decreed between tenants in common of a *waste*, though great inconvenience might ensue, as the want of pasture, shade, &c. *Manaton* v. *Squire*, 2 Ch. Cas. 237.

Partition decreed though persons not *in esse*, may become entitled.

It is no objection to a *partition*, that other persons may come *in esse* and be entitled: otherwise, in every case where there is a settled estate, with remainders to persons who may come *in esse*, there never could be a partition. *Wills* v. *Slade*, 6 Ves. 498.

Who may file bill.

An infant tenant in common, or joint-tenant, may file a bill for partition, or such a bill may be filed against him. *Tuckfield* against *Buller*, Ambl. 197. S.C. 1 Dick. 240. and it will be decreed.

A bill for a partition may be sustained on behalf of a joint-tenant of a *lease for years*; nor in such case is the reversioner a necessary party, (*a*) *Baring* v. *Nash*, 1 Ves. and Bea. 551. And a bill for a partition of *tithes* will lie. *Baxter* v. *Knollys*, 1 Ves. 495. But the court has no jurisdiction to grant a commission of partition, between tenants in common of a *copyhold*. *Scott* v. *Fawcett*, 1 Dick. 299. the statutes relating to partition not applying to copyholds. See Gilb. Ten. 185. Co. Cops. s. 54. Tracts. 125. Cro. Car. 44. *Burrell* v. *Dodd*, 3 Bos. and Pull. 378. *Oakley* v. *Smith*, 1 Eden, 261. It is the same as to *joint-tenants* of a copyhold, and also as to *coparceners*. See Hale's MS. n. Co. Litt. 59. a. (1). *vide* 2 Watk. Cop. [194] (*e*). Calthorpe's reading, 98.

Not for lands in Ireland.

A bill for a partition of lands in *Ireland*, cannot be sustained in England, because the court has no jurisdiction over lands there; and at common law, no writ of partition lies in England for lands in Ireland. *Cartwright* v. *Pettus*, 2 Ch. Cas. 214.

Different returns by commissioners.

Under a commission of partition to four commissioners, and two different returns made; one, by two of the commissioners, and another, by the remaining two, the court cannot act; but will grant another commission directed to *five* commissioners. *Watson* v. *Duke of Northumberland*, 11 Ves. 153. S.C. MS. and see *Corbett* v. *Davenant*, 2 Bro. C. C. 252. In cases of this kind, the proper mode is to move to quash the return. *Ibid.*

Costs.

With respect to *costs* in cases of partition, it is said to have been determined, that where the plaintiff was entitled to three or four hundred acres, and the defendant to four or five only, and though the defendant would have rather given up his part than be at the expense of a partition, yet it was decreed, and to be at the *equal* expense of both parties.

(*a*) [As to parties to bills for partition, the rule seems, that all persons necessary to make a conveyance must be parties. See *Anon*, 3 Swans. 139, n. *Ed.*]

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Parker against *Gerard*, Ambl. 237; and so determined by Lord Thurlow, in *Hyde* v. *Hindly*, 2 Cox, 408. This unreasonable doctrine is not now adhered to; the rule appearing to be, that in these cases no other costs are given, excepting those of issuing, executing, and confirming the commission, which are borne by the parties in proportion to the *value* of their respective interests; and no costs are allowed of the previous or subsequent proceedings. *Agar* v. *Fairfax*, 17 Ves. 558. *Calmady* v. *Calmady*, 2 Ves. Jun. 568. and see *Metcalf* v. *Beckwith*, 2 P. Wms. 377, 378. *Baring* v. *Nash*, 1 Ves. and Bea. 554. *Sed* vide Redesd. Tr. Pl. 98. 3d ed. 111. 2d ed. In *Hyde* v. *Hindly*, 2 Cox, 408. it was held, that where the parties are entitled *unequally*, if the *plaintiff* be entitled to the smaller share, the costs shall be borne equally. This appears perfectly just, as the partition must be presumed to be for his benefit, because it was at his request, and the defendant was forced to submit to it, at a time when perhaps the expense was highly inconvenient. (*a*)

Commissioners have no lien on commission.

The commissioners have no lien on the commission for their charges, and they cannot insist on payment in the first instance before they return the commission with their certificate. *Young* v. *Sutton*, 2 Ves. and Bea. 366. 1 Madd. Chanc. 250. 2d ed.

Conveyances necessary on partition in equity.

A partition at *law* is perfected by the delivery of possession in pursuance of the judgment of the court of law, which concludes all the parties to it without any conveyance whatever being made by them. But partition in *equity* proceeds upon CONVEYANCES, *to be* executed by the parties; in which case the same conveyances are necessary to confer a legal title as if the parties had agreed to a private partition; and if the parties be not competent to execute the conveyances, the partition cannot be perfected. *Whalley* v. *Dawson*, 2 Sch. & Lefr. 372. [*Miller* v. *Warmington*, ubi supra]; and when any of the parties are femes covert or tenants in tail, a fine or recovery will be equally necessary; and if the bill be by or against an infant, the *mutual* conveyances are respited until the infant attains twenty-one, *Tuckfield* v. *Buller*, Amb. 198. 1 Dickens, 240. S. C. Redesd. Plead. 97. 3d ed. 2 Cru. Dig. 541. 2d ed.; although the infant, whether plaintiff or defendant, be only *cestui que trust*, and the legal estate capable of being conveyed by the trustees. *Lord Brook* v. *Lord and Lady Hertford*, 2 P. Williams, 519. *Attorney General* v. *Hamilton*, 1 Madd. Rep. 214. The decree in these cases can only extend to make the partition give possession, and order enjoyment accordingly until effectual conveyances can be made. So if a contingent remainder, not capable of being barred or destroyed, be limited to a

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[(*a*) Where one party has been in the occupation of the premises, and has made improvements, the Court will not interfere, but upon allowance being made for them on a partition. *Swan* v. *Swan*, 8 Price, 518. *Ed.*]

person not in being, the conveyance must be delayed until such person shall come into being, or until the contingency shall be determined; in either case a supplemental bill would be necessary to carry the decree into execution: An executory devise may occasion a similar embarrassment. Redesd. Tr. Pl. 97. 3d ed. PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

The usual course is not for the court to order who shall be parties to the conveyance, but to leave it to the master to whom it is referred to settle the conveyances. *Attorney General* v. *Hamilton*, 1 Madd. Rep. 222.

The interests of *infants* are so far regarded by courts of equity, in cases of partition, as well as in all other cases, that no decree can be made against an infant, without a day being allowed him to shew cause against the decree after he comes of age; and he is always served with a subpœna to show cause within six months after coming of age, why the decree should not be made absolute; and if he do not appear, the decree is made absolute without entering an appearance. *Wharam* v. *Broughton*, 1 Ves. 183. *Savage* v. *Carrol*, 1 Ball & Beatty, 651. 2 Madd. Ch. 460. 2d ed. Where there is a decree *nisi causâ* against an infant, he may, upon coming of age, and before the decree is made absolute, put in another answer, the answer of his guardian not being binding upon him. *Fountaine* v. *Caine* and *Jeffs*, 1 P. Wms. 503; and he may make a defence, and examine witnesses anew. *Napier* v. *Lady Effingham*, 2 P. Wms. 401. But if an infant conceive himself aggrieved by a decree, he is not under a necessity to wait till he comes of age, in order to seek redress, but he may apply for that purpose as soon as he thinks proper; neither is he bound to proceed by way of rehearing, or bill of review, but may impeach the former decree by an original bill. *Richmond* v. *Tayleur*, 1 P. Wms. 734. *Carew* v. *Johnston*, 2 Sch. & Lefr. 292. Infancy.

An *infant plaintiff* is, it seems, (unless under extraordinary circumstances, see *Bennet* v. *Lee*, 2 Atk. 530,) as much bound, and as little privileged, as one of full age; *Lord Brook* v. *Lord Hertford*, 2 P. Wms. 519. *Gregory* v. *Molesworth*, 3 Atk. 626. *Windham* v. *Windham*, 2 Freem. 127. 1 Fonbl. Treat. of Equity, 19, 5th ed. but the court will take care that the infant does not make any injurious submission by his bill, and will, if necessary, when the cause is brought on, allow him to amend his bill, on paying the costs of the day. *Serle* v. *St. Eloy*, 2 P. Wms. 387. There are, however, cases in which an infant has been allowed to shew cause when he came of age, against a decree in his own cause, respecting *real* estate; *Lady Effingham* v. *Sir John Napier*, 2 P. Wms. 401. mentioned 3 Atk. 627; but he has been held to be bound by a decree in a cause regarding *personal estate*, wherein he was plaintiff, as much as a person of full age; since it would be most mischievous with regard to personal estate, if an infant, after being of age, should be allowed by a new bill to dispute any thing

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done during his minority, as to *maintenance, education*, &c. *Gregory* v. *Molesworth*, 3 Atk. 626. 2 Madd. Ch. 461. 2d ed.

In cases of partition, if no cause should be shewn after an infant attains twenty-one, or the cause shewn should not be allowed, the decree may be then extended to compel mutual conveyances. Redesdale's Pleadings, 97. 3d ed. (*a*)

IV. By Private Acts of Parliament.

PARTITION BY ACT OF PARLIAMENT.

There are so many difficulties attending partition even by bill in equity, that if it be desirable to gain the legal estate immediately, where there are infants interested who would be entitled to shew cause against the partition at the distance oftentimes of many years; or if the estate be so circumstanced that partition cannot be obtained either at law or in equity, as if the parties interested are lunatics; or the surviving trustee, or his heir, of a settlement with all the requisite powers of completing a partition, be a lunatic; or the trustees of an estate in strict settlement have no power by the settlement to make partition, and the parties interested be infants or only tenants for life, with contingent remainders to persons not ascertained, or not in being; or the trustees have a power to make partition, but have no authority how to apply the money *received* for equality of partition, or how to raise the money to be *paid* for equality of partition; or if there be a power to make partition, with a power to raise the money to be paid for equality of partition, by sale or mortgage of part of the lands in settlement, and the money could be raised with greater ease and benefit to the parties immediately interested and the remainder men, by a sale of timber, but the tenant for life in possession is restricted from cutting more than a certain quantity annually, or the tenant for life in such a case is subject to impeachment for waste; and in many other instances, as various as the necessities of families, and of which our intricate system of settlements prevents the accomplishment; and in many other cases in which courts of equity find they have no power to make a partition, unless clogged with such numerous impediments and inconveniences that the parties would not be desirous of obtaining it; then the only effectual way of proceeding is by a bill in parliament, which has been for many years a common mode of proceeding to accomplish a partition of estates.

No conveyance necessary.

The private act operates as a conveyance, and transfers an immediate legal estate to the trustees appointed to make the partition, or immediately to the parties themselves, if the property which each is to take has been previously fixed, without any conveyance from the parties. And

[(*a*) The Court cannot compel a mortgagee to a partition sought by the mortgagors, as he is entitled to the whole. *Swan* v. *Swan, ubi supra. Ed.*]

infants and other persons under disabilities are by it irrevocably bound. PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

See the dissertation on private acts of parliament; and the form of a partition by bill in parliament, *infra*.

ARTICLES OF AGREEMENT indented and made the day of , 18 ; BETWEEN [*first party*], of, &c. of the one part, and [*second party*], of, &c. of the other part. Parties.

WHEREAS (*b*) the said [*first party*], and [*second party*], are seised of or entitled to the fee simple (*c*), in joint- Recital of seisin in POSSESSION.

(*b*) If the premises be leasehold, say, LEASEHOLD.

"WHEREAS by indenture, bearing date on or about the day of , 179 , and made between [*lessor*], of, &c. of the one part, and [*lessee*], of, &c. of the other part; the said [*lessor*] demised and leased unto the said [*lessee*], his executors, administrators, and assigns, *All those* two messuages and gardens, situate at , in the county of , with the appurtenances, for the term of years, commencing from the day of , 179 , subject to the yearly rent of pounds, and to the several covenants and agreements therein contained. Recital of lease.

AND WHEREAS the said [*lessee*], died intestate in or about the year 18 , and administration of all and singular, the goods, chattels, and credits, of the said [*lessee*], was granted to , the wife of the said [*first party*], by her then name of [*maiden name*], by the (prerogative court of the Archbishop of Canterbury) on or about the day of , 18 . Intestacy of lessee, and grant of administration.

AND WHEREAS the said , the wife of the said [*first party*], and the said [*second party*], are the only children and next of kin of the said [*lessee*]; and as such the said [*first party*], in right of his said wife, and the said [*second party*], in his (*or* her) own right, are possessed of, or entitled to the said messuages and gardens, with the appurtenances, for the remainder of the said term." Of being entitled as next of kin of lessee.

(*c*) If the premises be copyhold, say, COPYHOLD.

"according to the custom of the manor of , in the county of in joint-tenancy, &c."

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tenancy, (*or* in common, (*or* in coparcenary) (*d*), in possession of ALL THOSE TWO closes or parcels of land, situate at , in the county of , in the

Parcels.

occupation of ; *and also all that* messuage or tenement, and garden, situate at aforesaid, in the occupation of . AND WHEREAS the

Recital of agreement for partition.

said [*first party*] and [*second party*], have mutually agreed to effectuate a partition of the said lands and hereditaments, upon the terms and in the manner hereinafter

Testatum.

mentioned. NOW THESE PRESENTS WITNESS, that the said [*first party*] doth hereby for himself, his heirs, executors, and administrators, agree with the said [*second party*], his heirs and assigns; *and* the said [*second party*] doth hereby for himself, his heirs, executors, and administrators, agree with the said [*first party*], his heirs and assigns, in manner following, that is to say (*e*); THAT the said

Part of premises to belong to one party,

REMAINDER OR REVERSION, on estate for life,

(*d*) If in remainder or reversion, say,
"in remainder or reversion, expectant immediately upon the decease of , of, &c. (*or* the end or other sooner determination of an indenture of lease, bearing date on or about the day of , 18 , for

for years,

years * from the day of , 18 , granted by [*lessor*], of, &c. (their late father deceased) to [*lessee*], of, &c. of and in ALL, &c."

or for years determinable on lives.

* If for years determinable on lives, say,
"*if* [*nominees*], of, &c. (any) or either of them should so long live, granted, &c."

LEASEHOLD.

(*e*) "that each of the said parties doth hereby for himself, his heirs, executors, and administrators, agree with the other of them, his executors, administrators, and assigns, in manner following, that is to say; THAT the messuage and garden, now in the occupation of , shall hereafter belong to, and become the sole property of the said [*first party*], his executors, administrators, and assigns, for the remainder of the said term; *and* that the messuage and garden, now in the occupation of , shall hereafter belong to, and become the sole property of the said [*second party*], his executors, administrators, and assigns, for the remainder of the said term."

two closes or parcels of land, shall hereafter belong to, and become the sole property of the said [*first party*], his heirs and assigns (*f*); And that the said messuage or tenement, and garden, shall hereafter belong to, and become the sole property of the said [*second party*], his heirs and assigns, (*f*): And that it shall be referred to , of, &c. a referee nominated by and on the behalf of the said [*first party*], and , of, &c. a referee nominated by and on the behalf of the said [*second party*], to decide and determine (*g*), whether any, and what sum of money, shall be paid, for equality of partition; and whether by a yearly payment, with a power of distress and entry, or by the payment of a sum in gross; and by which of the said parties, and at what time, such money shall be paid (*h*); And if the said re-

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and part to the other.

Referees to determine equality of partition.

Umpire, in default of re-

(*f*) "subject to the said estate for life (*or* years) of the said ;"

REMAINDER OR REVERSION.

(*g*) "which of the said parties shall hereafter during the said term, pay the yearly rent of pounds, reserved and made payable by the said indenture of lease, or otherwise, and in what proportion they shall pay the same; and whether there shall be inserted in the conveyances and assignments hereinafter agreed to be made, cross covenants for payment of the apportioned rent, and cross powers of distress and entry on the non-payment of the same, by the said parties respectively, or their respective executors, administrators, or assigns, in order that the said parties respectively, and their respective executors, administrators, and assigns, may be reimbursed all costs, charges, and expenses, which he or they shall incur, sustain, disburse, or expend, for, or by reason or means of the non-payment of the rent to be paid by the other of the said parties, his executors, administrators, and assigns, and"

LEASEHOLD.

Referees, or umpire, to determine which party shall pay rent, or in what proportions; and whether cross powers of distress shall be inserted in assignments.

(*h*) "and to which of the said parties, or in what proportion, the yearly rent, reserved by the said indenture of lease, shall be paid during the continuance of the term thereby granted;"

REVERSION.

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

ferees should not agree in their determination, within the space of . . . . calendar months from the date hereof, Then the same shall be referred to such one person as the said two referees shall, within the space of . . . . calendar months from the date hereof, for that purpose appoint to be umpire, who shall decide and determine the same within . . . . calendar months next after he shall be appointed umpire. AND that when it shall have been determined whether any, and what sum of money, shall be paid for equality of partition, and in what manner, and by which of the said parties such money shall be paid (*i*), *Then* the said parties respectively, and their respective heirs and assigns, shall with all convenient speed (*k*), make, do, and execute, all such acts, deeds, conveyances, or assurances, as the counsel (*l*) of the said parties respectively, or their respective heirs or assigns, shall advise or require, for the purpose of conveying and assuring the said hereditaments and premises hereby agreed to be held in severalty, unto the other of them the said parties, his heirs and assigns, or to such uses, and in such manner as he or they shall direct or appoint: AND that the said referees, or their umpire, shall be, and they and he are hereby authorised, (if they or he should think fit)

ferees, to determine equality of partition.

Parties to execute mutual conveyance.

Power to referees, or umpire, to make survey, &c.

REVERSION.

(*i*) " and which of the said parties shall be entitled to the said yearly rent, or in what proportions,"

COPYHOLD.

(*k*) " with the license and consent of the lord or lords, lady or ladies, of the manor or manors, of which the same are holden,* make, do, and execute, all such acts, deeds, conveyances, surrenders, or assurances, as the counsel of the said parties respectively, or their respective heirs or assigns, shall advise or require, for the purpose of conveying, surrendering, and assuring the said, &c."

(*l*) [As to the construction of this covenant, see *Blicke* v. *Dymoke*, 2 Bing. 105.]

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* It seems, that a partition cannot be perfected without the license, or subsequent consent of the lord: such as admitting them tenants to the respective parts in severalty. Hal. MS. Hargr. n. Co. Litt. 59. a. (1). *Vide ante*, 202.

to make a survey of the lands and hereditaments, and to cause a map or plan to be drawn thereof:) and that the costs, charges, and expenses, of the respective conveyances of the premises to be taken in severalty as aforesaid, shall be paid and borne by the party to whom the same shall be made; *but* that the costs, charges, and expenses, of preparing, engrossing, and executing this present agreement (and a duplicate hereof), or in anywise relating thereto, and of making such survey, (and such map as aforesaid,) and all other costs, charges, and expenses of the said referees, or their umpire, and all other costs, charges, and expenses incurred, or to be incurred, in or about the partition hereby agreed to be made, or in any wise relating thereto, shall be paid and borne by the said parties hereto and their respective heirs, executors, administrators, and assigns, in equal proportions: AND LASTLY, that the said referees, or their umpire, shall decide, to which of the said parties the custody of the several title deeds relating to the said lands and hereditaments, shall respectively belong; *and* by which of them, and in what proportions, the expenses of any attested copies, or covenants for production of deeds, which the said arbitrators, or their umpire, may deem necessary, shall be borne. IN WITNESS whereof, the parties above named have hereto, (and to a duplicate hereof,) set their hands and seals, the day and year first above written.

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

Each party to pay for his own conveyance. But other costs and charges to be borne equally.

Referees, or umpire, to decide who shall have title deeds, and who shall pay for attested copies, &c.

PARTITION OF FREEHOLD AND COPYHOLD LANDS BY COMMISSIONERS.

AGREEMENT *for a* PARTITION *by* COMMISSIONERS, *of* FREEHOLD *and* COPYHOLD *Premises, between two* COHEIRESSES *and their* HUSBANDS, *and the* TRUSTEES *of a* SETTLEMENT *of one of their Parts; and that certain Parts of the Property shall be taken as Part of each Allotment.*

ARTICLES OF AGREEMENT indented, had, made, concluded, and agreed upon, the day of , in the year of our Lord, 18 ; BETWEEN [A], of, &c. and [B] his wife, of the first part; [*two trustees*], of, &c. of the second part; [D] of, &c. and [E] his wife, of the third part.

Parties.

Recital of intestacy and seisin of father.

WHEREAS, [*father*], of, &c. died intestate, on or about the day of in the year 18 , seised of, or well and sufficiently entitled to the fee simple of the freehold and copyhold lands and hereditaments hereinafter described, and hereby agreed to be divided and partitioned in severalty, and which thereupon descended and came to the said [B] and [E] as his only children, and heirs at law. AND WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of , in the year 18 ; and made, or expressed to be made, between the said [B], by her then name and description of [*maiden name*], of the first part, the said [A] of the second part, and [*trustee*], of, &c. of the third part; being a settlement made previously to and on the marriage of the said [A], and [B], and which was afterwards duly solemnized, and took effect: the moiety or equal half part of the said [B], of and in the said lands and hereditaments, was conveyed and covenanted to be surrendered to the said

Descent to his daughters.

Settlement of one moiety.

[*trustee*], and his heirs: *As* to the said freehold lands and hereditaments, *To the use of*, *And as to* the said copyhold (*a*) lands and hereditaments, *In trust* for, such person or persons, and for such ends, intents, and purposes, as the said [A], and [B], should at any time, and from time to time, by any deed or writing under their hands and seals, sealed and delivered by them in the presence of two or more credible witnesses, jointly appoint: AND in default of such joint appointment, to the use of such person or persons as the said [B], in and by her last will and testament in writing, or any writing in the nature of her last will and testament, to be signed and sealed by her, in the presence of, and attested by, two or more credible witnesses, and whether sole or covert, should solely appoint; *And* in default of any such appointment, or so far as the same should not extend, *To the use* of, and *In trust* for the said [A], his heirs and assigns, in case he should survive his said wife. AND WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of , in the year 18 , and made, or expressed to be made, between the said [E], by her then name and description of [*maiden name*], of the first part, the said [D], of the second part, and the said [*trustees*], of the third part; being a settlement made previously to, and on the marriage of, the said [D], and [E], and which was afterwards duly solemnized, and took effect; the moiety or equal half part of the said [E], of and in the said lands and hereditaments, was

PARTITION OF FREEHOLD AND COPYHOLD LANDS BY COMMISSIONERS.

To such uses and trusts as husband and wife should jointly appoint.

In default of joint appointment, as wife should by will appoint.

And in default of any appointment, to husband in fee, if the survivor. Settlement of the other moiety.

(*a*) As the statute of uses does not extend to *copyholds*, according to the prevailing opinion, it seems that springing uses, or uses to arise in future, cannot be created by a surrender of copyholds. Kitch. on Courts, 170. edit. 1657. 172, edit. 1663. Co. Cop. s. 54. Tr. 124. Wms. n. 2. Saund. 12. Gilb. Ten. 182. 1 Sand. Uses, 203, 3d ed. 195. 2d. ed. 1 Cru. Dig. 418, 2d ed. Cru. Uses, 55. Sug. Gilb. Uses, 72. 1 Watk. Cop. [100], [185]. 2 *Ibid.* [193]. Gilb. Ten. 260. 261. Watk. n. 5. Bac. Abr. 779. Gwill. edit. Scriven's Cop. 185. 2d edit. 1 Watk. Cop. [208]. Sug. n. Gilb. Uses, 353. Noy's Max. 85, 319, 9th edit. *Sed vide* Sanders on Surrenders of Copyholds, and Fearne's Contingent Remainders, 201, 3d edit. 417, 4th edit. 276. Butl. edit. *contra*. *Et vide* 5 Cru. Dig. 590, s. 98. 2d edit.

Springing uses cannot, it seems, arise on a surrender of copyholds.

PARTITION OF FREEHOLD AND COPYHOLD LANDS BY COMMISSIONERS.

conveyed, and covenanted to be surrendered to the said [*trustees*], and their heirs, to certain uses, and upon certain trusts, therein particularly mentioned: In which said last in part recited indenture of release, are contained the usual powers to the said [*trustees*], their heirs and assigns, with the consent and approbation of the said [D] and [E], or the survivor of them, to be testified by some writing under their, or his, or her hands and seals, or hand and seal, to make sale, partition, or exchange of the moiety of the said lands and hereditaments therein mentioned; with power to raise money, to be paid, or to invest money received, for equality of partition. AND WHEREAS the said [A], and [B] his wife, and the said [*trustees*], with the consent of the said [D], and [E] his wife, testified by this writing, sealed and delivered by them in the presence of and attested by the two credible witnesses whose names are or are intended to be hereupon indorsed, as witnesses to the execution of these presents by the said [D], and [E] his wife, have mutually agreed to make a partition of the lands and hereditaments mentioned and comprised in the schedule hereunder written, or hereunto annexed. Now THESE PRESENTS WITNESS, that for effectuating the said partition, the said [A], for himself, his heirs, executors, and administrators, and for the said [B] his wife; and also the said [B], do hereby respectively agree with the said [*trustees*], their heirs and assigns, and they the said [*trustees*], as such trustees as aforesaid, with the consent of the said [D], and [E] his wife, testified as aforesaid, do hereby agree with the said [A], and [B] his wife, in manner following, that is to say; THAT a partition or division of all and singular the said lands and other hereditaments, mentioned and comprised in the said schedule hereunder written, or hereunto annexed, (*except* three cottages, &c. situate, &c. and a close of land, &c. situate, &c,) into two separate allotments, of equal value, or as nearly so as circumstances will permit, shall be made by [*commissioners*], of, &c.: AND that the said commissioners shall decide and determine, whether any, and what sum of money shall be paid, for equality of partition, and by which of the parties such money shall be so paid: THAT the said three cottages, &c. shall upon the said partition, be taken as

To certain uses and trusts;

With powers to trustees, with consent of husband and wife, or the survivor, to make sale, partition, or exchange.

Agreement to make partition.

Testatum.

Commissioners to make partition,

and decide who shall pay money for equality.

Particular premises to be allotted to each.

part of the share in severalty of the said [*trustees*], as such trustees as aforesaid; AND the said close, &c. shall be taken in severalty, by the said [A], and [B] his wife, and the difference in value between the said cottages, &c. and the said close, &c. shall be ascertained and determined by the said commissioners, and shall be paid for equality of partition accordingly: THAT for further enabling the said commissioners to make such allotments and division as aforesaid, it shall be lawful for them, and they are hereby authorised, to make a survey of the said estate, and to cause a map or plan to be drawn thereof: THAT if the said commissioners should differ in opinion, touching the said intended partition, or the money to be paid for equality, or touching the mode of carrying the said partition into effect, or any matter or thing relating thereto, then and in every such case, the subject matter of every such difference of opinion shall be reduced into writing, and shall be referred to the decision of [ ], or some other umpire, to be named by the said commissioners for that purpose; AND that the determination or decision of such umpire, upon the matter so to be referred to him, shall be final, binding, and conclusive, upon both the said commissioners, and upon the parties hereto: THAT when the allotments and division hereinbefore agreed upon, shall have been made, the said parties shall draw lots, in such manner as the said commissioners shall appoint, for the privilege of chusing one of the allotments, into which the said estates (*except* as aforesaid) shall have been divided: AND that when it shall have been decided in manner aforesaid, which of the said allotments shall be taken in severalty by the said [*trustees*], as such trustees as aforesaid, and whether any and what sum shall be paid for equality of partition, and by which of the said parties such money shall be paid; THEN the said [A], and [B] his wife, and all other necessary parties, shall at the expense of the said [D], and [E] his wife, their heirs and assigns, with all convenient speed, make, do, and execute, or cause and procure to be made, done, and executed, all such acts, deeds, appointments, conveyances, surrenders, or assurances in the law, as by the said [*trustees*], their heirs or assigns, or their or his counsel, shall be advised or required, for the purpose of vest-

PARTITION OF FREEHOLD AND COPYHOLD LANDS BY COMMISSIONERS.

The difference in value to be paid by each.

Commissioners authorized to make a survey and map of the estate.

Umpire to decide the differences of commissioners.

Parties to draw lots for the privilege of chusing.

When ascertained, to execute conveyances to each other.

PARTITION OF FREEHOLD AND COPYHOLD LANDS BY COMMISSIONERS.

ing the said three cottages, &c. and also such of the said allotments as shall have been decided to be taken in severalty by the said [*trustees*], their heirs or assigns, with the appurtenances, in them the said [*trustees*], their heirs and assigns; *nevertheless*, as to such part of the said lands and hereditaments as are of copyhold tenure, with the license and consent of the lord or lords, lady or ladies, of the manor or manors, of which the same are holden; (*a*) and *nevertheless*, upon and for the uses, trusts, ends, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, in and by the said indenture of settlement, of the day of , 18 , expressed and declared, of and concerning the said undivided moiety, hereditaments, and premises, comprised in and conveyed, and covenanted to be surrendered by the same indenture, as aforesaid: AND the said [D], and [E] his wife, and all other necessary parties, shall at the expense of the said [A], and [B] his wife, their executors or administrators, with all convenient speed, make, do, and execute, or cause and procure to be made, done, and executed, all such acts, deeds, appointments, conveyances, surrenders, and assurances in the law, as by the said [A], and [B] his wife, or the survivor of them, or his or her executors or administrators, or their, his, or her counsel, shall be advised or required, for the purpose of settling the said close, &c. and also such of the said allotments as shall have been decided to be taken in severalty by the said [A], and [B] his wife, with the appurtenances, *To the uses*, upon the trusts, and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, in and by the said in part recited indenture, of the day of 18 , expressed and declared, of and concerning the hereditaments and premises, thereby limited and settled as aforesaid; *but nevertheless*, as to such part of the said lands and hereditaments as are of copyhold tenure, with the license and consent of the lord or lords, lady or ladies of the manor, or manors, of which the same are holden: THAT the costs, charges, and expenses, of preparing, engrossing, and exe-

Expenses of commissioners, &c. to be equally borne,

(*a*) *Vide ante*, 202. 218.

cuting this present agreement, and of making such partition and division as aforesaid, and of making such survey, and such map as aforesaid, and all other costs, charges, and expenses, incurred, or to be incurred, in and about the said partition and division, or in any wise relating thereto; (*except* as hereinbefore is provided for, and also except the expenses of any fine or fines, recovery or recoveries, which may be necessary, and which expenses are to be paid by the party, of whose share the same respectively shall be levied or suffered), shall be paid and borne by the parties to the said partition in equal proportions; (*b*) THAT if either of the parties to the said intended partition should require an attested copy or attested copies, of any of the title deed or title deeds, in the custody of the other party to the said partition, or to have a deed of covenant for the production of any such title deed or title deeds, then and in such case, the expense of making such attested copy or copies, and the expenses attending the framing, engrossing, and executing of such deed of covenant, shall be paid by the party requiring the same: AND for the due execution and observance of the agreements hereinbefore contained, on the part of the said [A], and [B] his wife, the said [A] doth hereby bind himself, his heirs, executors, and administrators, to the said [*trustees*], their executors and administrators, in the sum of pounds, (*c*): AND for the due performance and observance of the agreement hereinbefore contained on the part of the said [*trustees*], the said [D] doth hereby bind himself, his heirs, executors and administrators, to the said [A], his executors and administrators, in the like sum of pounds. IN WITNESS, &c.

PARTITION OF FREEHOLD AND COPYHOLD LANDS BY COMMISSIONERS.

except fines or recoveries.

Expenses of attested copies, &c. to be paid by the requiring party.

Nomine pœnæ.

THE SCHEDULE to the above written agreement refers.

Schedule.

(*b*) If the commissioners are to decide who shall have the title deeds, *vide postquam*, 231.

(*c*) *Vide ante*, 47. (*h*)

PARTITION BY ARBITRATORS.

AGREEMENT *to leave it to* ARBITRATORS *to make a* PARTITION ; *and to dismiss a Bill in Chancery for a Partition, where one of the Parties is seised of Seven-Eighths, and the other Party of One Eighth, of a Manor, Farm, and Lands.*

ARTICLES OF AGREEMENT indented, had, made, concluded, and agreed upon, the day of , in the year of our Lord 18 ; BETWEEN [*first party*], of , in the county of , of the one part, and [*second party*], of , in the county of , of the other part.

Parties.

Recital,— seisin in undivided and unequal shares.

WHEREAS the said [*first party*] and [*second party*], are seised of the inheritance in fee simple of and in the manor of , in the county of , with the rights, members, and appurtenances ; *And also* of and in a capital messuage or tenement called , and the out-houses, buildings, barns, stables, yards, gardens, orchards, and appurtenances thereunto belonging ; *And also* of and in all and singular the arable, pasture, and marsh lands, and salt marsh grounds, to the said manor, messuage, and farm belonging, or in any wise appertaining, containing by estimation acres, or thereabouts, situate, lying, and being, in the parish of , in the county of , and now in the occupation of , as tenant thereof, in the shares or proportions following, that is to say ; the said [*first party*] is seised of or entitled to seven undivided eighth parts or shares thereof ; and the said [*second party*] is seised of or entitled to the

remaining undivided one eighth part or share thereof. AND WHEREAS the said [*first party*], on or about the day of , 18 , filed a bill in the high court of chancery, against the said [*second party*], praying, *That* an account might be taken, by and under the direction of the said court, of the price or sum paid, or of stock transferred by [*father*], deceased, the late father of the said [*first party*], for the redemption of the land tax charged on the said estates; *And* that the value of the said stock might be ascertained, and the defendant directed to repay the plaintiff one eighth part of the value thereof, or to transfer to the plaintiff in the books of the Governor and Company of the Bank of England, like stock to the amount of one eighth part thereof; *And* that an account might be taken under the direction of the said court, of what was due and owing in respect of the rents and profits of the said estates; *And* that a fair and equal partition and division might be made of the said manor and estate, between the plaintiff and defendant, according to their respective rights and interests therein; *And* that a commission might issue for that purpose, with the usual directions; *And* that the parts and shares of the said manor and estate, which should be allotted to the plaintiff and defendant, under the said commission, might be enjoyed by them in severalty; *And* that proper conveyances thereof might be executed. AND WHEREAS the said [*second party*] hath not yet put in his answer to the said bill. AND WHEREAS since the said bill was filed, the said [*second party*] hath paid to the said [*first party*], the value of one eighth part of the stock invested by the said [*father*], deceased, in the purchase of the land tax, of or upon the said lands and hereditaments; *And* the said [*first party*] and [*second party*], have settled all accounts between them, in respect of the rents aud profits of the said manor, lands, and hereditaments, up to the day of last past; And the said [*first party*] and [*second party*] have agreed that the said suit in the court of chancery should be forthwith dismissed without costs; *And* that a fair partition should be made between them, in proportion to their respective shares, of the said lordship or manor, lands, and hereditaments, by two indifferent per-

PARTITION BY ARBITRATORS.

Bill in Chancery, filed to ascertain money paid for redemption of land tax, and for a division and partition;

which defendant had not answered.

All accounts between parties settled.

Agreement to dismiss bill without costs, and make partition by arbitrators or umpire.

PARTITION BY ARBITRATORS.

sons, one of whom to be chosen by the said [*first party*], and the other by the said [*second party*], and in case such two persons should not agree in their determination, then that the same partition should be made by such one person as the said two referees should for that purpose appoint; *And* the said [*first party*] and [*second party*] have also agreed, that in making such partition, the said manor of , exclusive of the said messuage, farm, and lands, should be considered and taken to be of the value of pounds, of lawful money of Great Britain [and Ireland], and should be allotted by the said referees, or their umpire, as they or he should think proper, either to the said [*first party*], or to the said [*second party*], as part of his share of the whole estate. AND WHEREAS in pursuance of the said agreement the said [*first party*] hath nominated [*arbitrator*], of , in the county of , and the said [*second party*] hath nominated [*arbitrator*], of , in the county of , referees, or arbitrators, for the purpose of making such partition as aforesaid. NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, *it is hereby mutually agreed*, between and by the said parties hereto, and each of them the said [*first party*] and [*second party*], doth hereby for himself, his heirs, executors, and administrators, and so far as the covenants hereinafter contained are respectively applicable to him or them, covenant with the other of them, his heirs and assigns, in manner following, that is to say; THAT the said messuage, farm, lands, and hereditaments, hereinbefore mentioned (exclusive of the said manor of), shall be forthwith valued and appraised, by the said [*arbitrators*]; and in case they should not agree in their valuation within the space of (*two*) calendar months, to be computed from the date hereof, THEN the same shall be valued and appraised by such one person as the said [*arbitrators*] shall within the space of (*three*) calendar months, from the date hereof, for that purpose nominate and appoint to be umpire in the premises; who shall make his valuation within (*two*) calendar months next after he shall be appointed umpire: THAT for the purpose aforesaid, it shall be lawful for the said [*arbitrators*], or their umpire, to admeasure, or cause the said lands to be

Manor to be considered of the value of pounds.

Nomination of referees.

Testatum.

Premises to be valued by referees or umpire.

Arbitrators, or umpire, to cause premises to be measured and mapped.

admeasured, and to make or cause to be made, a plan or map, or plans or maps, of the same messuage, farm, lands, and hereditaments, and to do and execute all such further and other acts, matters, and things, as they or he shall think necessary or proper: THAT after such valuation shall be made as aforesaid, by the said [*arbitrators*], they the said [*arbitrators*] shall forthwith, within the space of , then next after, appropriate, select, and set apart, either with or without the said manor of , as they shall think proper (reckoning the value of such manor at the sum of , as aforesaid), so much and such part and parts of the said messuage, farm, lands, and hereditaments, as they shall think proper, and as they shall, with the said manor if included in such appropriation and selection, but if not, then without such manor, adjudge to be the full value of one eighth part of the whole of the said manor, messuage, farm, lands, and hereditaments, as and for the specific part or share of him the said [*second party*], of and in the same manor, messuage, farm, lands, and hereditaments, and to be by him, his heirs and assigns, held in severalty, in lieu of his undivided part or share therein: THAT in case the said [*arbitrators*] should not within the space of , agree in such appropriation and selection, as aforesaid, then such appropriation and selection shall be made by such one person as the said [*arbitrators*] shall within the space of , for that purpose appoint umpire, who shall make such appropriation and selection, within next after he shall be appointed umpire as aforesaid: THAT the residue of the said messuage, farm, lands, and hereditaments, not appropriated and selected as and for the specific part or share of the said [*second party*], as aforesaid, together with the said manor, if not included in such appropriation and selection as aforesaid, shall be taken by the said [*first party*], and be held by him, his heirs and assigns, in severalty, in lieu of his undivided parts or shares of and in the whole of the said manor, messuage, farm, lands, and hereditaments: THAT the costs, charges, and expenses, of preparing and executing these presents, and of making such admeasurements, plans, and maps as

PARTITION BY ARBITRATORS.

After valuation, &c. arbitrators to set apart, with or without the manor, one-eighth part for second party.

If arbitrators should not agree, umpire to select.

Residue to be taken by first party.

The expenses of measuring and planning, to be borne in equal proportions.

PARTITION BY ARBITRATORS.

aforesaid, and of making such valuation, appraisement, appropriation, and division as aforesaid, and otherwise attending the aforesaid reference, shall be borne and paid by and between the said [*first party*] and [*second party*], in equal shares and proportions (*a*): THAT the said [*first party*] shall and will forthwith, at the mutual expense of himself, and the said [*second party*], cause the said bill, so filed by the said [*first party*] as aforesaid, to be dismissed without costs: THAT he the said [*first party*], and all other necessary and proper parties, shall and will, at any time or times after such appropriation, selection, and division shall be made as aforesaid, upon every reasonable request of the said [*second party*], his heirs or assigns, and at his or their costs and charges, (except the costs and charges of or attending any fine or recovery, which it may be found necessary to levy or suffer, in order to make out the title of the said [*first party*],) make, do, and execute, or cause and procure to be made, done, and executed, all such lawful and reasonable acts, things, deeds, devices, conveyances, and assurances in the law whatsoever, which shall be requisite or necessary, for perfectly and absolutely granting, releasing, and assuring the said undivided parts or shares of him the said [*first party*], of and in the specific part or share which shall be appropriated and selected for the said [*second party*], to be by him held in severalty as aforesaid, with the rights, members, and appurtenances, unto and to the use of the said [*second party*], his heirs and assigns for ever, or otherwise, as he or they shall direct or appoint, as by the said [*second party*], his heirs or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required: AND THAT the said [*second party*] and all other necessary and proper par-

To dismiss bill in equity.

First party to execute conveyance to second party.

Second party to execute conveyance to first party.

(*a*) Where the parties are interested unequally, and the partition is made at the request of the person having the smaller share, or he is plaintiff in equity for a partition, it is but justice that the costs should be borne equally; but where the person having the smaller share is forced to make a partition, it would be more equal justice for the expenses to be paid *pro rata*, according to their shares. See *Hyde* v. *Hindly*, 2 Cox, 408, *et ante*, 211.

ties, shall and will at any time or times, after such appropriation, selection, and division shall be made as aforesaid, upon every reasonable request of the said [*first party*], his heirs or assigns, and at his or their costs and charges, (except the costs and charges of or attending any fine or recovery which it may be found necessary to levy or suffer, in order to make out the title of the said [*second party*],) make, do, and execute, or cause and procure to be made, done, and executed, all such lawful and reasonable acts, things, deeds, devices, conveyances, and assurances in the law whatsoever, which shall be requisite or necessary, for perfectly and absolutely granting, releasing, and confirming the undivided part or share of him, the said [*second party*], of and in the specific part or share which shall be appropriated and selected for the said [*first party*], to be by him held in severalty, as aforesaid, with the rights, members, and appurtenances, unto and to the use of the said [*first party*], his heirs and assigns for ever, or otherwise, as he or they shall direct or appoint, as by the said [*first party*], his heirs or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required: THAT the said arbitrators, or their umpire, shall decide to which of the said parties the custody of the several title deeds relating to the said manor, messuage, farm, lands, and hereditaments, shall respectively belong, and by whom, and in what proportions, the expenses of any attested copies, or covenants for production of deeds, which may be necessary, shall be borne: THAT if the said [*first party's arbitrator*] should die, or refuse, or become incapable to act as arbitrator, before the whole of the premises hereby referred shall be determined by the said [*arbitrators*], or their umpire; *Then* the said [*first party*], his heirs or assigns, shall forthwith thereafter nominate and appoint some other person to be arbitrator or referee, in the stead and place of the said [*first party's arbitrator*]; and so in like manner upon the decease or neglect, or refusal to act, of any arbitrator succeeding to the place of the said [*first party's arbitrator*]: *(Add a similar clause as to* second party's arbitrator:) THAT every arbitrator so to be appointed as a substitute for the said [*first party's*

PARTITION BY ARBITRATORS.

Commissioners, or umpire, to decide who shall have title deeds.

If first party's arbitrator die before award, he to appoint another.

Same as to second party's. New arbitrators to have

PARTITION BY ARRITRATORS.

same powers as old arbitrators.

Submission to be made a rule of court.

arbitrator] or [*second party's arbitrator*], or any succeeding arbitrator, shall as to such of the premises as shall not at the time of his nomination and appointment be actually determined, or referred to an umpire, have the same powers and authorities as are hereby vested in the arbitrator in or to whose place he shall come or succeed: AND LASTLY, the submission and agreement hereby made, shall be made a rule of his Majesty's court of , at Westminster. IN WITNESS whereof, the said parties have hereto (interchangeably) set their hands and seals, the day and year first above written.

PARTITION BY ONE COMMISSIONER AND ACT OF PARLIAMENT.

AGREEMENT *for a* PARTITION *by one Commissioner, where one of the Parties is seised subject to Contingent Remainders, which makes it necessary to procure a private Act of Parliament;* AND *that a Close of Land of which the Parties are seised in common, to uses to prevent Dower on a Joint Purchase, shall go with the Allotment which shall include a Dwelling-house adjoining, at the Price of Half of the Money paid for the Close.*

ARTICLES OF AGREEMENT indented, had, made, concluded, and agreed upon, the day of , in the year of our Lord 18 ; BETWEEN [*first party*], of in the county of , , of the one part, and [*second party*], of in the county of , of the other part. Parties.

WHEREAS [*testator*], late of in the county of , esquire, deceased, being seised to him and his heirs in fee simple, of an undivided moiety of and in the messuages, tenements, lands, and hereditaments, in the schedule hereunder written mentioned or comprised, by his last will and testament in writing, bearing date on or about the day of 18 , and duly executed and attested for the devise of lands of inheritance; and after the decease of the said [*testator*], and on or about the day of 18 , duly proved in the (prerogative) court of the (arch-bishop) of (Canterbury), gave and devised the said undivided moiety of and in the said messuages, tenements, lands, and hereditaments, unto [*eldest son*], his eldest son, for the term of his life, without impeachment of waste; *And* from and after the de- *Recital* of a devise of a moiety of the premises. Proof of will. To eldest son for life. Remainder to his first and

PARTITION BY ONE COMMISSIONER AND ACT OF PARLIAMENT.

cease of the said [*eldest son*], unto his first and every other son, severally and successively, according to their respective seniorities, in tail male; *And* in default of such issue, unto his the testator's second son, the said [*first party*], and his assigns for his life, without impeachment of waste; *And* from and after the decease of the said [*first party*], unto his first and every other son, severally and successively, according to their seniorities in tail male: *And* in default of such issue respectively, unto his own the testator's right heirs for ever: And the said [*testator*] afterwards, and on or about the day of , 18 , departed this life, leaving the said [*eldest son*], his eldest son and heir at law: And whereas by indentures of lease and release, bearing date respectively, on or about the and days of , 18 , the indenture of release being made, or expressed to be made, between the said [*eldest son*] of the first part, the said [*first party*], of the second part, and [*mortgagee*], of in the county of yeoman, of the other part, the said undivided moiety of and in the said messuages, tenements, lands, and hereditaments, were by the said [*eldest son*], and [*first party*], conveyed and assured [unto the said [*mortgagee*], and his heirs, *To hold* the same to the said [*mortgagee*], and his heirs]; *To the use* of the said [*mortgagee*], his heirs, and assigns, *But subject* nevertheless, and without prejudice to the devises and limitations contained in the said will of the said [*testator*], to and for the benefit of the issue male of the said [*eldest son*], and the issue male of the said [*first party*] respectively; *And subject also* to a proviso or agreement, for redemption on payment by the said [*eldest son*] and [*first party*], or either of them, their or either of their heirs, executors, administrators, or assigns, of the sum of [*mortgage money*], pounds, with interest for the same, at the time and in the manner in the said indenture of release mentioned: And whereas the said [*eldest son*] departed this life on or about the day of , 18 , a bachelor and intestate: And whereas by indentures of lease and release, bearing date respectively on or about the and days of , 18 , and made or expressed to be made, between the said [*mortgagee*] of

other sons in tail male.

Remainder to first party for life.

Remainder to his first and other sons in tail male.

Remainder to testator's own right heirs.

Death of testator.

Heirship.

Lease and release, by way of mortgage, by eldest son, and first party.

Subject to the devises to their issue male.

And subject to equity of redemption.

Death of eldest son intestate, a bachelor.

Of a reconveyance from mortgagee to first party.

the one part, and the said [*first party*] of the other part, the said undivided moiety of and in the said messuages, tenements, lands, and hereditaments, were conveyed and assured by the said [*mortgagee*] unto the said [*first party*] and his heirs, *To hold* the same unto the said [*first party*] and his heirs], *To the use* of the said [*first party*], his heirs and assigns: *But subject* nevertheless to the devises and limitations contained in the said will of the said [*testator*], to or for the benefit of the issue male of the said [A. B.], or to such of them as were then subsisting: AND WHEREAS the said [*second party*] is seised of or entitled to the other undivided moiety of and in the said messuages, lands, tenements, and hereditaments, with the appurtenances, for an estate of inheritance in fee simple: AND WHEREAS the said [*first party*] hath no issue male: AND WHEREAS the said [*first party*] and [*second party*] have mutually agreed to effectuate a partition of the aforesaid messuages, lands, tenements, and hereditaments, upon the terms, and in manner hereinafter mentioned: AND WHEREAS the titles of the said [*first party*] and [*second party*] to their respective moieties, of and in the said messuages, tenements, lands, and hereditaments, have been approved of by the counsel of the said parties respectively, subject to the objection which arises to the title of the said [*first party*] to his undivided moiety, by reason of the same having been conveyed to and vested in the said [*mortgagee*], subject and without prejudice to the devises and limitations contained in the said will of the said [*testator*], to or for the benefit of the issue male of the said [*first party*], in the manner hereinbefore mentioned and recited. NOW THESE PRESENTS WITNESS, that the said [*first party*] doth hereby agree with the said [*second party*], who doth hereby agree with the said [*first party*], in manner following, that is to say; THAT on or before the day of next, a partition or division shall be made, of all and singular the said messuages, tenements, lands, and hereditaments, in the schedule hereunder written, mentioned, or comprised, and all other the estates in the said parishes of and , if any, belonging in undivided moieties to them the said [*first party*] and [*second party*], into two separate allotments, of equal value,

PARTITION BY ONE COMMISSIONER AND ACT OF PARLIAMENT.

Subject to the devises to his issue male.

Second party seised of other moiety.

First party, no issue male.

Agreement for partition.

Titles of both parties approved by their counsel, except as to the issue male of first party.

Testatum.

Partition to be made by one commissioner.

PARTITION BY ONE COMMISSIONER AND ACT OF PARLIAMENT.

or as nearly so as circumstances will permit, shall be made by [*commissioner*], of , in the county of , land surveyor: THAT when and as soon as such partition or division shall have been made, the said [*first party*] and [*second party*], or some person or persons authorised by them respectively in that behalf, shall, under the direction, and in the manner directed by the said [*commissioner*], draw lots for the said allotments: THAT it shall be lawful for the said [*commissioner*] to decide and determine, whether any and what sum of money shall be paid for equality of partition, and by which of the said parties such money shall be paid: THAT when it shall have been determined, which of the said allotments shall be taken in severalty by the said [*first party*], and which of the said allotments shall be taken in severalty by the said [*second party*], and when the said [*commissioner*] shall have decided and determined, whether any and what sum of money shall be paid for equality of partition, and by which of the said parties such money shall be paid, the said parties respectively, or their respective heirs or assigns shall, with all convenient speed, apply to parliament for an act to confirm the said partition or division, and make, do, and execute, all such other acts, deeds, or assurances, as the counsel of the said parties respectively, or their respective heirs or assigns, shall advise or require for the purpose of vesting such of the said allotments as shall have been decided in manner aforesaid, to be taken in severalty by the said [*first party*], with the appurtenances, in him the said [*first party*], his heirs and assigns, or to such uses, and in such manner, as he or they shall direct or appoint, *Subject* and without prejudice to the devises and limitations contained in the said will of the said [*testator*], deceased, to or for the benefit of the issue male of the said [*first party*]; *And* for the purpose of vesting such of the said allotments as shall have been decided in manner aforesaid, to be taken in severalty by the said [*second party*], with the appurtenances, in him the said [*second party*], his heirs and assigns, or to such uses and in such manner as he or they shall direct or appoint: THAT the said [*commissioner*] shall be, and he is hereby authorised, to make a survey of the said estates, and to cause a map or plan to be drawn thereof: THAT

Parties to draw lots for allotments.

Commissioner to determine equality of partition money.

Agreement to apply for act of parliament to confirm partition.

And for further assurance.

As to first party.

As to second party.

Authority to commissioner to make survey and maps.

PARTITION BY ONE COMMISSIONER AND ACT OF PARLIAMENT.

the costs, charges, and expenses of preparing, engrossing, and executing this present agreement, and of making such partition or division as aforesaid, and of applying for and obtaining an act of parliament for confirming the same, and of making such survey, and such map or plan as aforesaid, and all other costs, charges, and expenses incurred, or to be incurred, in or about the said partition or division, or in anywise relating thereto; *Except* the costs, charges, and expenses, which have been incurred by the said [*first party*], in making out the title to his own undivided moiety of the said messuages, tenements, lands, and hereditaments, and in investigating the title of the said [*second party*] to the other undivided moiety thereof; *And* the expenses which have been incurred by the said [*second party*] in making out the title to his own undivided moiety of the said messuages, tenements, lands, and hereditaments, and in investigating the title of the said [*first party* to the other undivided moiety thereof; *And also except* any additional costs or charges, which may be incurred by reason of the absence from England of either of the said parties, (which additional costs or charges are to be paid by the party whose absence shall occasion the same) *shall* be paid and borne by the said [*first party*] and [*second party*], in equal proportions: THAT if either of the said parties to the said intended partition should require an attested copy, or attested copies, of any title deed or title deeds, in the custody of the other party to the said partition; or to have a deed of covenant for the production of any such title deed, or title deeds, THEN and in such case, the expense of making such attested copy or copies, and the expenses attending the framing, engrossing, and executing of such deed of covenant, shall be paid by the party requiring the same: AND WHEREAS by an indenture of feoffment, bearing date on or about the day of , 18 , and made, or expressed to be made, between [*feoffor*], of, &c. of the first part, and the said [*first party*] and [*second party*], of the second part, and [*trustee to prevent dower*] of the third part, and by livery of seisin, made according to the form and effect of that indenture, the said [*feoffor*], in consideration of the sum of pounds, to him paid by the said [*first party*] and

Costs to be borne equally,

except each to pay costs of making his own, and investigating other party's title.

And each to pay costs to be incurred by his absence from England.

Each to pay for attested copies, &c. required by him.

Recital of feoffment of close.

PARTITION BY ONE COMMISSIONER AND ACT OF PARLIAMENT.

[*second party*], did enfeoff, release, ratify, and confirm, unto the said [*first party*] and [*second party*], and their heirs, *All that* close of land, situate, &c. *To hold* the same to the said [*first party*] and [*second party*], and their heirs, *as to, for, and concerning*, one undivided moiety or half part thereof, *To such uses* as the said [*first party*] should appoint, in the manner and by the means therein mentioned; *And* in default of such appointment, and in the mean time subject thereto, *To the use* of the said [*first party*] and his assigns, for his life; With remainder, *To the use* of the said [*trustee*], and his heirs, for the life of the said [*first party*], *In trust* for the said [*first party*] and his assigns, With remainder, *To the use* of the said [*first party*], his heirs and assigns; *And as to, for, and concerning*, the other one undivided moiety or half part thereof, (*repeat similar uses in favour of* [second party]); AND WHEREAS the said close comprised in the said hereinbefore recited indenture of feoffment, lies contiguous to the house and premises in the occupation of , being part of the hereditaments so agreed to be parted and divided as aforesaid, and was so purchased by the said [*first party*] and [*second party*], as aforesaid, to the intent that the same might be held and enjoyed therewith: Now IT IS HEREBY FURTHER AGREED, by and between the said [*first party*] and [*second party*], that when and so soon as the aforesaid partition or division shall have been completed, according to the true intent and meaning of these presents, such one of the said parties, to whom, upon such partition or division as aforesaid, the said house and premises in the occupation of the said , shall be allotted in severalty, shall become the purchaser of the undivided moiety of the other party, of and in the said close, comprised in the said hereinbefore in part recited indenture of feoffment, with the appurtenances, at the price of one moiety of the said sum of pounds, at which the entirety thereof was purchased by the said [*first party*] and [*second party*], as hereinbefore is mentioned; and such purchase shall, as soon as the case will admit, be completed accordingly. IN WITNESS, &c.

As to a moiety to uses, to prevent dower of first party's wife.

And as to the other moiety, to uses, to prevent dower of second party's wife.

Close lies contiguous to a dwelling house.

Further testatum.

Party to whom dwelling house allotted, to purchase other's moiety in close, at half of original purchase money.

Schedule.

THE SCHEDULE above referred to.

AGREEMENT *between a Husband and Wife, Tenants for Life successively, of one Moiety of Freehold Lands, with a Power in the Wife to appoint in Fee, and with a Power in Trustees to Partition; and by the Tenant in Common in Fee, of the other Moiety; subject to Mortgages for Years of the Entirety: for a* PARTITION *by* COMMISSIONERS *or their* UMPIRE, *who are to make the Allotments without the Parties drawing Lots.*

PARTITION OF FREEHOLD BY COMMISSIONERS OR UMPIRE, SUBJECT TO MORTGAGES. WITHOUT DRAWING LOTS.

ARTICLES OF AGREEMENT indented, had, made, concluded, and agreed upon, the day of , in the year of our Lord 18 ; BETWEEN [*first party*], of, &c. and , his wife, of the one part, and [*second party*], of, &c. of the other part. Parties.

WHEREAS immediately before the execution of the indentures hereinafter recited, the said , the wife of the said [*first party*], and the said [*second party*], were seised of or entitled to the messuages, lands, and hereditaments, hereinafter particularly mentioned, with their appurtenances, for an estate of inheritance in fee simple, as tenants in common, in remainder or reversion, expectant immediately upon the decease of [*father, with the same christian and surname as second party*], the elder, late of , deceased, subject nevertheless to certain mortgages for terms of years affecting the same premises. AND WHEREAS by indentures of lease and release, bearing

Recitals, of seisin in fee as tenants in common in remainder,

after estate of tenant for life, now deceased,

subject to mortgages.

Settlement of one moiety.

PARTITION OF FREEHOLD BY COMMISSIONERS OR UMPIRE, SUBJECT TO MORTGAGES.

date respectively on or about the and days of , 18 , and made or expressed to be made between the said , the wife of the said [*first party*], by her then name and description of [*maiden name*], of &c. spinster, of the first part, the said [*first party*], of the second part, and [*trustee*], of, &c. of the third part, being a settlement made previously to the marriage of the said [*first party*] with the said his wife, and which marriage afterwards took effect and was duly solemnized, *The* one undivided moiety or half part of the said [*wife, maiden name*], of and in the said messuages, lands, and hereditaments, with their appurtenances, were conveyed to the said [*trustee*], and his heirs, *To the use* of the said [*wife, maiden name*], until the solemnization of the said intended marriage, *And* from and immediately after the solemnization thereof, *To the use* of the said [*first party*], and his assigns, for the term of his natural life, without impeachment of waste, With remainder *To the use* of the said [*wife, maiden name*], and her assigns, for the term of her natural life, without impeachment of waste, With remainder, *To the use* of such person or persons as the said [*wife, maiden name*], should in the manner therein mentioned, either by deed or will, and whether sole or covert, direct or appoint; And in default of such direction or appointment, *To the use* of the said [*wife, maiden name*], her heirs and assigns. *And* in the said indenture of release and settlement, were contained the usual powers of leasing, and of selling, exchanging, and making partition. AND WHEREAS the said [*first party*], and his wife, and the said [*second party*], party hereto, have mutually agreed to effectuate a partition of the said messuages, lands, and hereditaments, upon the terms and in the manner hereinafter mentioned. Now THESE PRESENTS WITNESS, that the said [*first party*], and his wife, do hereby agree with the said [*second party*], party hereto, who doth hereby agree with the said [*first party*], and his wife, in manner following, that is to say; THAT a partition and division of all and singular the said messuages, lands, and hereditaments, into two separate allotments, of equal value, or as nearly so as

To the use of first party for life.

Remainder to wife for life.

Remainder as she should appoint.

Remainder to her in fee.

Usual powers to trustee to partition, &c.

Agreement for partition.

Testatum.

Partition to be made by commissioners.

circumstances will permit, shall be made, as soon as conveniently may be, by [*commissioner*], of, &c. a commissioner nominated by and on behalf of the said [*first party*], and his wife, and [*commissioner*], of, &c. a commissioner nominated by and on the behalf of the said [*second party*], party hereto; AND that if the said commissioners should differ in opinion, touching the said intended partition, or the mode of carrying the same into effect, or touching any matter relating thereto, *Then*, and in every such case, the subject matter of every such difference of opinion shall be reduced into writing, and shall be referred to an umpire, to be named by the said [*commissioners*] before they proceed on the said arbitration, or the valuation or arrangement for that purpose; AND that the determination or decision of such umpire, upon the matter or matters so to be referred to him, shall be final, binding, and conclusive, both upon the said commissioners, and upon the parties hereto: AND that when and so soon as such partition or division shall have been made, the said [*commissioners*], or in case of their difference, the said umpire, shall decide which of the said allotments shall be taken in severalty by the said [*first party*], and his wife, and which of the said allotments shall be taken in severalty by the said [*second party*], party hereto: AND that it shall be lawful for the said [*commissioners*], or in case of their difference, the said umpire, to decide and determine whether any, and what sum of money, shall be paid for equality of partition, and by which of the parties such money shall be paid: AND that when it shall have been determined which of the said allotments shall be taken in severalty by the said [*first party*], and his wife, and which of the said allotments shall be taken in severalty by the said [*second party*], party hereto, and whether any and what sum of money shall be paid for equality of partition, and by which of the said parties such money shall be paid; the said parties respectively, and their respective heirs, appointees, or assigns, shall with all convenient speed, make, do, and execute, all such acts, deeds, or assurances, as the counsel of the said parties respectively, or their respective heirs, appointees, or assigns, shall advise or re-

PARTITION OF FREEHOLD BY COMMISSIONERS OR UMPIRE, SUBJECT TO MORTGAGES.

And if they disagree, the decision of their umpire to be final.

Commissioners or umpire to decide what allotment each party shall have;

and the equality of partition money.

Parties to execute mutual conveyances.

PARTITION OF FREEHOLD BY COMMISSIONERS OR UMPIRE, SUBJECT TO MORTGAGES.

quire, for the purpose of conveying and assuring such of the said allotments as shall have been decided in manner aforesaid, to be taken in severalty, by the said [*first party*], and his wife, with their appurtenances, To the uses, upon and for the trusts, intents and purposes, and with, under, and subject to, the powers, provisoes, declarations, and agreements, in and by the said hereinbefore in part recited indenture of settlement, limited, expressed, or declared of or concerning the said undivided moiety, hereditaments, and premises, thereby granted and released, or as near thereto as the deaths of parties, and other circumstances, will allow; *And* for the purpose of conveying and assuring such of the said allotments as shall have been decided in manner aforesaid, to be taken in severalty by the said [*second party*], party hereto, with the appurtenances, unto him the said [*second party*], party hereto, his heirs and assigns, or to such uses, and in such manner, as he or they shall direct or appoint: AND that such provisions shall be made, for the payment by the respective parties of their shares of the monies due, or to become due, on the said mortgages respectively, as by the said commissioners or their umpire, shall in that behalf be directed: AND IT IS HEREBY FURTHER AGREED, that the said [*commissioners*] shall be, and they are hereby authorized, to make a survey of the said estates, and to cause a map or plan to be drawn thereof: AND that the costs, charges, and expenses, of preparing, engrossing, and executing this present agreement, or in any wise relating thereto, and of making such partition or division as aforesaid, and of making such survey, and such map as aforesaid, and all other costs, charges, and expenses incurred, or to be incurred, in or about the said partition or division, or in any wise relating thereto, (*except* the costs, charges, and expenses of the respective conveyances of the allotments to be taken in severalty) shall be paid and borne by the said [*first party*], and [*second party*], party hereto, in equal proportions: AND that the expense of the conveyances of the allotment to be taken in severalty by the said [*first party*], and his wife, shall be borne by the said [*first party*]: AND that the expense of the conveyances

As to wife's moiety, to uses, &c. of settlement.

And as to second party's moiety, to him in fee.

Commissioners or umpire to decide who shall pay mortgage money.

Commissioners authorized to make a survey, &c.

All costs of partition to be borne equally.

Each party to pay costs of his own conveyance.

of the allotment to be taken in severalty by the said [*second party*], party hereto, shall be borne by him, the said [*second party*], party hereto: AND IT IS HEREBY FURTHER AGREED AND DECLARED, that the said commissioners, or their umpire, shall decide to which of the said parties the custody of the several title deeds, relating to the said hereditaments, shall respectively belong, and by whom, and in what proportions, the expenses of any attested copies, or covenants for production of deeds, which may be necessary, shall be borne. *In witness, &c.*

PARTITION OF FREEHOLD BY COMMISSIONERS OR UMPIRE, SUBJECT TO MORTGAGES.

Commissioners or umpire to decide who shall have the title deeds.

PARTITION OF FREEHOLD AND COPYHOLD.

RELEASE IN FEE, AND COVENANT TO LEVY FINE.

COVENANT TO SURRENDER COPYHOLD.

AGREEMENT *for effecting a* PARTITION *of* FREEHOLD *and* COPYHOLD *Estates, between a Lady on the eve of Marriage, and her Sister and her Husband;* RELEASE *in Fee of the* FREEHOLD *Estates,* COVENANT TO LEVY A FINE *of the married Sister's undivided Moiety, either in the Common Pleas, County Palatine, Welsh County, or Ancient Demesne; And* COVENANT TO SURRENDER *the* COPYHOLD *Estates to Trustees, upon trust to effect the Partition.*

Parties.

THIS INDENTURE, made the day of , in the year of our Lord 18 , BETWEEN [*first party*], of, &c. (spinster) of the first part, [*second party*], of, &c. and [ ] his wife, of the second part, and [*trustees*], of, &c. of the third part.

Recital of seisin in possession,

WHEREAS (*a*) the said [*first party*], and [ ] the

(*a*) If the seisin be in coparcenary, say,

Recital of coparcenary in freehold and copyhold.

"WHEREAS the said [*first party*]; and , the wife of the said [*second party*], are the only children and coheirs of [*father*], late of, &c. who died in or about the month of , 18 , intestate, and a widower, and as such coheirs, they the said [*first party*], in her own right, and the said [*second party*], and his wife, in the right of the said , are seised in coparcenary, of the fee simple and inheritance in possession, in equal undivided moieties, of the freehold hereditaments, and of the inheritance in possession, according to the custom of the manor of , in the county of , of the copyhold or customary hereditaments hereinafter mentioned, and intended to be hereby respectively granted, released and confirmed, and covenanted to be surrendered."

wife of the said [*second party*], are tenants in common in fee in possession of the freehold hereditaments, and are tenants in common of the inheritance in possession, according to the custom of the manor of in the county of , of the copyhold or customary hereditaments hereinafter mentioned, and intended to be hereby respectively granted, released and confirmed, and covenanted to be surrendered, under and by virtue of the last will and testament of their late father, [*testator*], of, &c. deceased, bearing date on or about the day of , 18 , and proved in the Prerogative Court, of the (Archbishop) of (Canterbury), on or about the day of , 18 ; AND WHEREAS the said [*first party*] and [*second party*], and , his wife, are desirous that a partition should be made of the freehold and copyhold and customary hereditaments hereinafter mentioned, and intended to be hereby respectively granted, released, and confirmed, and covenanted to be surrendered, with their respective appurtenances: *And* that the divided part which should be taken in lieu of the respective undivided moieties, or equal half parts or shares, of the said [*first party*], and the said [*second party*], and his wife, in right of the said , of and in the said freehold and copyhold or customary hereditaments, should be respectively settled in the manner hereinafter mentioned or referred to concerning the same: *And* for carrying the said desire into effect, it hath been agreed that the said [*first party*], and [*second party*], should enter into the covenants hereinafter contained: *And* that the said freehold and copyhold, or customary hereditaments, should be respectively conveyed and surrendered, To the use of the said [*trustees*], their heirs and assigns, *Upon the trusts* hereinafter declared concerning the same: NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, It is hereby, with the privity and approbation of the said [*wife*], (testified by her being a party to, and sealing and delivering these presents), covenanted and agreed, between and by the said [*first party*], and the said [*second party*], as follows, (that is to say): THAT [*commissioner*], of, &c. shall be the person to divide on the behalf of the said [*first party*], the

PARTITION OF FREEHOLD AND COPYHOLD.

under father's will.

Desire for partition,

and settlement.

Agreement for perfecting same.

Testatum.

Appointment of commissioners.

PARTITION OF FREEHOLD AND COPYHOLD.

freehold or copyhold or customary hereditaments hereinafter mentioned, and intended to be hereby respectively granted, released, and confirmed, and covenanted to be surrendered; *And* [*other commissioner*], of, &c. shall be the person to divide the same hereditaments on the behalf of the said [*second party*] and his wife: And that with all convenient speed, after the execution of these presents, the same hereditaments shall be divided by the said [*commissioner*], or the person to be appointed in his stead, as hereinafter is mentioned; *And* by the said [*other commissioner*], or the person to be appointed in his stead, as hereinafter is mentioned, into two parts of equal value, or as nearly so as possible, taking into account on such division, the quantity, quality, and situation of the same hereditaments, and the leases to which the same are subject: That if before such division shall have been made as aforesaid, the said [*commissioner*], or any person to be appointed in his stead, as next hereinafter mentioned, shall die, or refuse, or become incapable [to do what may be necessary to be done on his part] to effect such division, Then and so often as the same shall happen, the said [*first party*], whether covert or sole, and notwithstanding her coverture, and after her decease her executors or administrators, shall, within one calendar month after such death, or of such refusal or incapacity to act, appoint some other fit and competent person in his stead, to do what is hereby required to be done by the said [*commissioner*], for effecting the said division: That if before such division shall have been made as aforesaid, the said [*other commissioner*], or any person to be appointed in his stead, as next hereinafter mentioned, shall die, or refuse, or become incapable [to do what may be necessary to be done on his part,] to effect such division; Then, and so often as the same shall happen, the said [*second party*], and his wife, or the survivor of them, or the executors or administrators of such survivor, shall within one calendar month after such death, or of such refusal or incapacity to act, appoint some other fit and competent person in his stead, to do what is hereby required to be done by the said [*other commissioner*], for effecting the said division: That when such division shall have been made as aforesaid, the said

to make partition.

If first party's commissioner die, she to appoint another.

If second party's commissioner die, they to appoint another.

Parties to draw lots for priority of choice.

[*first party*], her executors or administrators, and the said [*second party*] and his wife, or the survivor of them, or the executors or administrators of such survivor, shall as soon as conveniently may be, by themselves or their agents, draw lots for the privilege of choosing one of the parts into which the said hereditaments shall be divided; and the successful party shall choose one of the said parts accordingly: And if the said [*first party*], her executors or administrators, shall be the successful party, the divided part which she or they shall choose, shall be in lieu of the undivided moiety, or equal half part or share of the said [*first party*], of and in the said hereditaments; and the other divided part shall be in lieu of the said undivided moiety, or equal half part or share of the said [*second party*], and his wife, in right of the said [*wife*], of and in the said hereditaments: *But* if the said [*second party*], and his wife, or the survivor of them, or the executors or administrators of such survivor, shall be the successful party, Then the divided part which they, he, or she, shall choose, shall be in lieu of the undivided moiety, or equal half part or share of the said [*second party*] and his wife, in right of the said [*wife*], of and in the said hereditaments; and the other divided part shall be in lieu of the undivided moiety, or equal half part or share of the said [*first party*] of and in the said hereditaments: That if upon such division as aforesaid, the persons making the same shall not be able conveniently to divide the said hereditaments into two parts, exactly equal in value to each other, and shall in consequence award a sum of money to be paid for equality of partition, such sum shall within (*three*) calendar months after the lots shall have been drawn, and such choice made as aforesaid, be paid as follows (that is to say); if the divided part of the greatest value shall be taken in lieu of the undivided moiety, or equal half part or share of the said [*first party*], then the sum which shall be so awarded as aforesaid, shall be paid by the said [*first party*], her heirs, executors, or administrators, to the said [*second party*], his executors, administrators, or assigns; *But* if the divided part of the greatest value shall be taken in lieu of the said undivided moiety, or

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Allotments to be in lieu of undivided moieties.

Money awarded for equality of partition to be paid in three months.

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equal half part or share of the said [*second party*], and his wife, in right of the said [*wife*], then the sum which shall be so awarded as aforesaid, shall be paid by the said [*second party*], his executors, administrators, or assigns, to the said [*first party*], her executors, administrators, or assigns: THAT all the costs and charges of carrying these presents into effect, including the charges of the persons who are to make such division as aforesaid, shall be paid and borne in equal shares by the said [*first party*], her heirs, executors, or administrators, and the said [*second party*], his heirs, executors, or administrators: THAT all the deeds, evidences, and writings, which may relate solely to the title to any one of the two parts, into which the said hereditaments are to be divided as aforesaid, shall be delivered to the person or persons who shall become entitled to such part: AND that all the other deeds, evidences, and writings, which relate to the title of the hereditaments so to be divided as aforesaid, or any of them, shall be deposited or lodged in the hands or custody of some third person, to be mutually approved of by the parties interested; *Upon trust* to produce and show forth the same from time to time, upon any trial or hearing, or upon the execution of any commission for the examination of witnesses, and upon all other necessary and reasonable occasions, for the purpose of shewing, evidencing, or making out the title to the said hereditaments, or any part or parts thereof, when and so often as occasion shall require, and to permit the same to be from time to time inspected by any person or persons interested in the hereditaments to which the same shall relate; but not to part with the same, or any of them, without the consent in writing of all persons beneficially interested therein; AND that from time to time, and at all times hereafter, it shall be lawful for the persons beneficially interested in the hereditaments to which the last-mentioned deeds, evidences, and writings, or any of them relate, to have free access thereto, and free liberty to inspect the same, at all reasonable times, and at his, her, or their expense to make copies of the same or any of them. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of

Expenses to be paid equally.

Deeds relating solely to either allotment to go with it.

All other deeds to be deposited for both parties' benefit.

Further testatum.

the sum of ten shillings, of lawful money of Great Britain [and Ireland], by the said [*trustees*] to each of them, the said [*first party*] and [*second party*], and his wife, paid at or before the sealing and delivery of these presents, the receipts whereof are hereby respectively acknowledged, they, the said [*first party*] and [*second party*], and his wife, according to their respective estates, shares, and interests, but not further or otherwise, *have*, and each and every of them *hath* granted, bargained, sold, released and confirmed; And by these presents *do*, and each and every of them *doth* grant, bargain, sell, release, and confirm unto the said [*trustees*], (in their actual possession now being, by virtue of a bargain and sale to them thereof made by the said [*first party*] and [*second party*], and his wife, in consideration of five shillings, by indenture bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession), and to their heirs, ALL THOSE freehold messuages, lands, tenements, hereditaments, and premises, situate, &c. with their and every of their rights, members, and appurtenances; AND all houses, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, closes of land, meadow and pasture, feedings, woods, underwoods, and the ground and soil thereof, commons, and common of pasture and of turbary, and other commonable rights, hedges, ditches, fences, mounds, ways, paths, waters, watercourses, liberties, privileges, easements, profits, commodities, advantages, and emoluments whatsoever, to the hereditaments hereby released, or otherwise assured, or intended so to be, or any of them respectively belonging, or in any wise appertaining, or accepted, reputed, deemed, taken, known, held, occupied, or enjoyed, as part, parcel, or member of the same, or any of them respectively; AND the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits thereof, and of every part and parcel thereof; AND all the estate, right, title, interest, trust, property, claim, and demand whatsoever, of them the said [*first party*] and [*second party*], and his wife, and of each and every

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Release of

freehold parcels.

General words for farms.

Reversion.

All the estate.

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of them, in, to, and out of the same premises, and every of them, and every or any part or parcel thereof. TO HAVE AND TO HOLD the said freehold and hereditaments, hereby granted and released, or expressed, or intended so to be, with their, and every of their rights, members, and appurtenances, unto the said [*trustees*], and their heirs for ever;

Habendum in fee to trustees.

Upon trusts after mentioned.

To the use of the said [*trustees*], their heirs and assigns, for ever; *Upon* and for the trusts, intents, and purposes, hereinafter expressed and declared, of and concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that

Covenant by second party, that he and his wife will levy a fine *sur conuzance*, &c.

in pursuance and further performance of the said agreement, the said [*second party*], with the privity and approbation of the said his wife, (testified by her being a party to, and sealing and delivering these presents) doth hereby for himself, his heirs, executors, and administrators, and for the said his wife, covenant and agree with the said [*trustees*], their heirs and assigns, That he, the said [*second party*], and the said his wife, shall and will (*a*) as of term last, term next, or some other subsequent term, at the request of the said [*trustees*], their heirs or assigns, but at the costs and charges of the said [*second party*], acknowledge and levy unto the said [*trustees*] and their heirs (*b*), before his ma-

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ANCIENT DEMESNE.

(*a*) If the lands are held in ancient demesne, say,

"on or before the day of next, at the costs and charges of the said [*second party*], acknowledge and levy unto the said [*trustees*] and their heirs, in the court of ancient demesne, within the said liberty of , (*or* the said manor of), one or more fine or fines *sur conuzance de droit come ceo, &c.* according to the usual course of levying fines of lands and hereditaments within the said liberty (*or* manor) of the undivided moiety of them, the said [*second party*] and his wife, of all that, &c. with the appurtenances, by the names," &c. *as above.*

COUNTY PALATINE.

(*b*) If the lands are in the county palatine of Durham, Lancaster, or Chester, say,

"at the next grand session or assizes to be held for and within the said county palatine of , before his

jesty's justices of the court of common pleas at Westminster, one or more fine or fines, *sur conuzance de droit come ceo*, &c. with proclamations (*c*) according to the form of the statutes in that behalf made and provided, and to be engrossed and recorded, according to the order and courses of fines in such cases used and accustomed, of the undivided moiety of them the said [*second party*] and

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majesty's justices of the same grand session or assizes, one or more fine or fines," &c. *as above.*

If the lands are in any of the Welsh counties, say,

WELCH COUNTY.

"before his majesty's justice or justices of great session for the said county of , one or more fine or fines," &c. *as above.*

(*c*) The proclamations in this case would be unnecessary; for by a fine with or without proclamations, and whether levied in the court of common pleas, or in an inferior court, a married woman may convey her own estate of freehold or inheritance, or bar herself of her dower or jointure; because a fine derives its effect from the principles of the common law, and not from any statute. Williams's note, 2 Saund. 175. f. (2), 4th ed. Cruise on Fines, 2d ed. 187. Cru. Dig. Tit. 35. ch. 10. s. 26. 2d ed.

Proclamations on fines unnecessary to bind married woman.

A fine with proclamations pursuant to the statutes 4 Hen. VII, c. 24. 32 Hen. VIII, c. 36. is a bar to the issue in tail; but a fine at common law, that is without proclamations, is not; though when levied by tenant in tail in possession, it operates as a discontinuance of the estate tail: *Hunt* v. *Bourne*, 1 Salk. 339. 1 Saund. 258. (8); but no actual entry is necessary to avoid a fine at common law. *Jenkins* v. *Pritchard*, 2 Wilson, 45.

Proclamations necessary to bar issue in tail.

It is in the election of the conuzee of a fine, or his heir, to have it proclaimed: *Wakefield* v. *Hodgeson*, Cro. Eliz. 693; but on account of the extensive operation of fines with proclamations, they are now generally proclaimed.

Fines levied in courts of *ancient demesne* make a discontinuance, and have all the effects of a fine levied in the court of common pleas; excepting that they cannot be proclaimed, because the statute, *modus levandi Fines*, 18 Ed. I. 2 Inst. 510. does not extend to lands in ancient demesne, consequently they cannot operate as a bar by non-claim; nor as a bar to the issue in tail, under the 4 Hen. VII. c. 24. s. 2. *Hunt* v. *Bourne*, Lutw. 781. because no fine but a fine with proclamations is within that statute. 1 Salk. 340. S. C. [See the Dissertation on Fines, Vol. IV. 134.]

Operation of fines in ancient demesne.

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his wife, of the freehold hereditaments hereinbefore mentioned, and intended to be hereby granted, released, and confirmed, with their rights, members, and appurtenances, [by the names and descriptions of messuages, cottages, toft, barns, dovecots, gardens, orchards, hundred acres of land, hundred acres of meadow, hundred acres of pasture, hundred acres of wood, and acres of furze and heath, with the appurtenances, in , or] by such [other] apt, proper, and convenient names, [number of messuages and acres,] quantities, qualities, and other descriptions, as shall be sufficient to comprise the same. *And it is hereby agreed and declared* between and by the parties to these presents, that the grant, release, and confirmation hereinbefore contained; *And* the said fine or fines, and all and every other fines or fine, conveyances, and assurances, of the same hereditaments and premises, shall operate and enure, *To the use* of the said [*trustees*], their heirs and assigns, *Upon* and for the trusts, intents, and purposes, hereinafter expressed, of and concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, the said [*first party*], so far as relates to her undivided moiety or equal half part of and in the copyhold or customary hereditaments hereinafter mentioned, but not further or otherwise, doth hereby for herself, her heirs, executors, and administrators: *And* the said [*second party*], (with the privity and approbation of the said his wife, testified as hereinbefore is mentioned), so far as relates to the undivided moiety or equal half part or share of the said [*second party*] and his wife, in right of the said , of and in the same copyhold or customary hereditaments, but not further or otherwise, doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*trustees*], and their heirs, *That* they, the said [*first party*], and [*second party*] and his wife, shall and will at the next courts to be respectively held in and for the manor of and the manor of , with the members, in the said county of , and at the joint costs and charges of the said [*first party*],

Declaration, that the release and fine shall enure

to the use of the trustee in fee on the trusts aftermentioned. Further testatum.

Covenant by first party as to her moiety.

And by second party, with consent of his wife, as to their moiety.

To surrender copyholds.

and [*second party*] respectively, or their respective heirs, executors, or administrators, well and effectually surrender, or cause or procure to be surrendered into the hands of the lords or ladies of the said manors respectively, *To the use* of the said [*trustees*], their heirs and assigns, ALL THOSE several closes, pieces, or parcels, situate, &c. with the appurtenances thereto belonging. *To hold* the same unto the said [*trustees*], their heirs and assigns, at the will of the lords or ladies of the said manors respectively, according to the respective customs thereof, by the rents and services therefore due and of right accustomed, *Upon*, and for the trusts, intents, and purposes, hereinafter expressed and declared of and concerning the same. AND *it is hereby agreed and declared* between and by the parties to these presents, that the said [*trustees*], their heirs and assigns, shall stand and be seised of and interested in the said freehold and copyhold, or customary hereditaments and premises, hereby respectively granted, released, and confirmed, and covenanted to be surrendered, or intended so to be, with their respective appurtenances, upon and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same, that is to say; UPON TRUST, that they the said [*trustees*], and the survivor of them, and the heirs and assigns of such survivor, do and shall permit and suffer the said hereditaments and premises to be divided agreeably to the covenants or agreements hereinbefore contained: AND in the mean time, and until in pursuance of the said covenants or agreements, the said hereditaments and premises shall be divided, and the lots shall be drawn, and such choice made as aforesaid; UPON THIS FURTHER TRUST, that the said [*trustees*], and the survivor of them, and the heirs and assigns of such survivor, do and shall pay the rents and profits of the said undivided moiety, or equal half part or share of the said [*first party*], of and in the said hereditaments and premises, to, or permit the same to be received by, the person or persons who would for the time being be entitled to the rents and profits of the divided part, which would have been taken in lieu of the same undivided moiety, or equal half part or share, if the intended partition had taken effect agreeably to the terms of these presents: *And* do and shall

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To the use of trustees

in fee.

On trusts after mentioned.

Declaration of trust.

To permit partition to be made.

And until partition, to permit respective parties to receive rents.

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pay the rents and profits of the undivided moiety or equal half part or share of the said [*second party*], and his wife, in right of the said , of and in the said hereditaments and premises, to, or permit the same to be received by, the person or persons who would for the time being be entitled to the rents and profits of the divided part, which would have been taken in lieu of the said last mentioned undivided moiety, or equal half part or share, if the said intended partition had taken effect, agreeably to the terms of these presents: AND when in pursuance of the covenants or agreements hereinbefore contained, the said hereditaments and premises shall have been divided, and the lots shall have been drawn, and such choice made as aforesaid, then UPON THE TRUSTS following, that is to say; *As* to the divided part, which shall be taken in lieu of the undivided moiety, or equal half part or share of the said [*first party*], of and in the said hereditaments and premises; UPON TRUST that the said [*trustees*], or the survivor of them, or the heirs or assigns of such survivor, do and shall, at the proper costs and charges of the said [*first party*], her heirs, executors, or administrators, convey and surrender the same with the appurtenances, unto and to the use of [*trustees of intended marriage settlement*], of, &c. their heirs and assigns, *Upon* and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as shall be expressed and declared of and concerning the same, in and by an indenture already prepared and engrossed, and intended to bear even date with these presents, and to be made between the said [*first party*] of the first part, [*intended husband*], of, &c. of the second part, and the said [*trustees of settlement*], of the third part, (being the settlement intended to be executed previously to the marriage which is about to be solemnized between the said [*intended husband*], and [*first party*]): *And as* to the divided part which shall be taken in lieu of the undivided moiety, or equal half part or share of the said [*second party*], and his wife, in right of the said , of and in the said hereditaments and premises, UPON and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as the said [*second party*], and

When partition and choice made,

first party's share

to be conveyed to the trustees of her intended marriage settlement.

Second party's share to be conveyed

as husband and wife appoint by deed;

his wife, by any deed or deeds, instrument or instruments, in writing, with or without power of revocation and new appointment, to be by them sealed and delivered in the presence of, and attested by two or more credible witnesses, shall from time to time direct or appoint: *And* in default of, or until such direction or appointment, and so far as the same if incomplete shall not extend; IN TRUST for the said [*second party*], and his assigns, during his life, without impeachment of waste: *And* after his decease, IN TRUST for the said his wife, her heirs and assigns, for ever: PROVIDED ALWAYS, and it is hereby declared and agreed by and between all the parties to these presents, that the said [*trustees*], and each of them, and the heirs, executors, administrators, and assigns of them, and each of them, shall be charged and chargeable only for such monies as they respectively shall actually receive by virtue of the trusts hereby reposed in them, notwithstanding his or their, or any or either of their giving or signing, or joining in giving or signing, any receipt or receipts for the sake of conformity: *And* that either of them shall not be answerable or accountable for any banker or other person, with whom or in whose hands any part of the said trust monies shall or may be deposited or lodged for safe custody, or otherwise, in the execution of the trusts hereinbefore contained: *And* that they, or any of them, shall not be answerable or accountable for any misfortune, loss, or damage, which may happen in the execution of the aforesaid trusts, or in relation thereto, except the same should happen by or through his or their own wilful default respectively; and then, and in that case, each person respectively shall singly and alone be answerable for such loss or damage as shall arise from his or her own default: *And also* that it shall and may be lawful to and for the said respectively, their respective heirs, executors, administrators, and assigns, by and out of the monies which shall come to their respective hands by virtue of the trusts aforesaid, to deduct, retain, and reimburse, to and for himself and themselves respectively, all costs, charges, damages, expenses, and fees to counsel for advice, which they or any of them shall or may suffer, sustain, expend, disburse, lay out, be at, or be put unto,

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in default of appointment,

for husband for life;

remainder for wife in fee.

Indemnity to trustees.

Trustees to reimburse themselves all costs, &c.

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Covenant for title by first party as to her undivided moiety;

in or about the execution of the aforesaid trusts, or in relation thereunto: AND THE SAID [*first party*], so far as relates to her undivided moiety, or equal half part or share of and in the hereditaments and premises hereby respectively granted, released and confirmed, and covenanted to be surrendered, or intended so to be, and their respective appurtenances, and the right to convey and surrender the same undivided moiety, or equal half part or share, and for the same undivided moiety, or equal half part or share, being free from incumbrances, and for the quiet enjoyment, and further assurance thereof, but not further or otherwise; doth hereby for herself, her heirs, executors, and administrators; AND THE SAID [*second party*], so far as relates to the undivided moiety, or equal half part or share of the said [*second party*], and his wife, in right of the said , of and in the said hereditaments and premises hereby respectively granted, released, and confirmed, and covenanted to be surrendered, or intended so to be, and their respective appurtenances; and the right to convey, and surrender the same undivided moiety, or equal half part or share; and for the same undivided moiety, or equal half part or share, being free from incumbrances, and for the quiet enjoyment and further assurance thereof, but not further or otherwise, doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*trustees*], their heirs and assigns, in manner following, that is to say; That (for and notwithstanding any act, deed, matter or thing whatsoever, made, done, committed, executed, or suffered by them, the said [*first party*], and [*second party*], and his wife, to the contrary) they the said [*first party*], and [*second party*], and his wife, now at the time of the sealing and delivery of these presents, have in themselves good right, full power, and lawful and absolute authority, to grant, bargain, sell, release, convey, and surrender the said freehold and copyhold, or customary hereditaments and premises, hereby respectively granted, released, and confirmed, and covenanted to be surrendered, or intended so to be, and every of them, and every part and parcel thereof, with their and every of their rights, members, and appurtenances, to the uses, and

and by second party for himself and wife, for their undivided moiety;

for title.

upon and for the trusts, intents, and purposes, and in manner and form aforesaid, according to the true intent and meaning of these presents: AND LIKEWISE, that the hereditaments and premises, hereby respectively granted, released, and confirmed, and covenanted to be surrendered, or intended so to be, and every of them, and every part and parcel thereof, with their and every of their rights, members, and appurtenances, shall and lawfully may from time to time, and at all times hereafter, remain, continue, and be, to the several uses, upon the several trusts, and for the several intents and purposes, hereinbefore expressed and declared of and concerning the same; and shall and may be peaceably and quietly had, held, and enjoyed accordingly; without the let, suit, trouble, denial, eviction, ejection, disturbance, molestation, hindrance, interruption, claim, or demand whatsoever, of, from, or by the said [*first party*], and [*second party*], and his wife, any or either of them, or their, any, or either of their heirs, or any person or persons claiming, or to claim, by, from, through, under, or in trust for them, or any or either of them; AND free and clear, and freely, clearly, and absolutely acquitted, exonerated, and discharged, or otherwise by them the said [*first party*], and [*second party*], and his wife, or one of them, their, or one of their heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, right and title of dower, uses, intails, trusts, wills, statutes merchant, and of the staple, recognizances, judgments, extents, executions, rents, arrears of rent, annuities, legacies, sum and sums of money, yearly payments, forfeitures, re-entries, cause and causes of forfeiture and re-entry, debts of record, debts due to the King's Majesty, and of, from, and against all and singular other titles, troubles, charges, and incumbrances whatsoever, made, done, executed, committed, or suffered by the said [*first party*], and [*second party*], and his wife, or any or either of them, (other than and except as to the said copyhold hereditaments, the rents, duties, and ser-

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Peaceable enjoyment.

Free from incumbrances.

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vices, henceforth to be paid, done, and performed, for or in respect of the same hereditaments): AND MOREOVER, that they the said [*first party*], and [*second party*], and his wife, and their heirs, and all and every other person or persons, having, or lawfully claiming, or who shall or may at any time or times hereafter, have, or lawfully claim, any estate, right, title, interest, inheritance, property, or demand whatsoever, either at law or in equity, of, in, to, or out of the said freehold and copyhold, or customary hereditaments and premises, hereby respectively granted, released, and confirmed, and covenanted to be surrendered, or intended so to be, or of, in, to, or out of any of them, or any part or parcel thereof, by, from, under, or in trust for them, or any of them, shall and will, from time to time, and at all times hereafter, upon every reasonable request of the said [*trustees*], their heirs or assigns, but at the proper costs and charges in the law of the person or persons at whose instance such request shall be made, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, and executed, all and every such further and other lawful and reasonable act and acts, thing and things, deed and deeds, devices, conveyances, surrenders, and assurances in the law whatsoever, for further, better, more perfectly and absolutely granting, releasing, confirming, surrendering, and assuring the said freehold and copyhold or customary hereditaments and premises, hereby respectively granted, released, and confirmed and covenanted to be surrendered, or intended so to be, and every of them, and every part and parcel thereof, with their and every of their rights, members, and appurtenances, to the several uses, upon the several trusts, and for the several intents and purposes, hereinbefore expressed and declared, of and concerning the same, or such of them as shall then remain to be performed, and capable of taking effect; be the same by fine, feoffment, common or customary recovery or recoveries, or other matter of record, or not of record, or otherwise howsoever; As by them the said [*trustees*], or the survivor of them, his heirs or assigns, or any of them, their, or any of their counsel in the law, shall be

For further assurance.

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reasonably advised, or devised, and required; so that such further assurance or assurances, contain or imply in them no further or other covenant or warranty than against the person or persons who shall make and execute the same, his, her, or their heirs, executors, and administrators' acts and deeds only; and so that the party or parties who shall be required to make and execute any such further assurance or assurances, be not compelled, nor compellable, for the making or doing thereof, to go or travel from his, her, or their dwelling, or respective dwellings, or usual place or places of abode. IN WITNESS, &c.

EXCHANGE OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

AGREEMENT *for an* EXCHANGE* *of* FREEHOLD, COPYHOLD, *or* LEASEHOLD *Premises; where it is referred to Commissioners, or their Umpire, to determine the Sum to be paid, for Equality of Exchange.*

Parties.

ARTICLES OF AGREEMENT made the day of , 18 , BETWEEN [*first party*], of, &c. of the one part, and [*second party*], of, &c. of the other part.

Agreement by first party to deliverabstract.

First the said [*first party*], for himself, his heirs, executors, and administrators, doth hereby agree with the said [*second party*], his (*a*) heirs and assigns, that he the said [*first party*], or his (*b*) heirs, shall and will, on or before the day of next, at his and their own expense, make and deliver to the said [*second party*], his agent or attorney, a full, complete, and perfect abstract, in the usual manner, of the title of him, the said [*first party*], to ALL THAT dwelling-house and garden, situate, &c. with the appurtenances (*c*): AND if the coun-

FREEHOLD.

Parcels.

To execute conveyance.

LEASEHOLDS.

(*a*) If the premises are leasehold, say, "executors, administrators, and assigns,"

(*b*) "executors or administrators"

LEASEHOLD.

(*c*) If the premises are leasehold, say,

Reference to lease.

"held by the said [*first party*], for the remainder of a term of years, granted by an indenture bearing date on or about the day of , 18 , and made between [*lessor*], of the one part, and [*lessee*], of

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* [See the dissertation on Exchanges, Vol. IV, 86.]

sel of the said [*second party*], should be of opinion that the said [*first party*], has a good title to the inheritance

EXCHANGE OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

the other part, subject to the rents, covenants, and conditions, therein contained; but the said [*first party*], shall not be required to produce the lessor's title*: And if the counsel of the said [*second party*], should be of opinion that the said [*first party*], has a good title to the said dwelling-house and garden, for the remainder of the said term, that he, the said [*first party*], and all other necessary parties, on or before the day of next, on receiving from the said [*second party*], such sum of money, if any, as shall be awarded for equality of exchange, shall and will assign and assure the said dwelling-house and garden to the said [*second party*], for the residue of the said term, free from incumbrances, but subject as aforesaid, in consideration of such money, if any, for equality of exchange, and of a conveyance of the two closes of leasehold land, hereinafter mentioned; in which conveyance, shall be contained covenants, by the said [*first party*], that notwithstanding any act done by the said [*first party*], (or the person under whom he claims,) the lease is valid, not forfeited, surrendered, or determined, or become void or voidable; that the said [*first party*] has, or the assigning parties have, good right to assign; that the rent has been paid, and the covenants performed to the time of assigning; for quiet enjoyment during the term, free from incumbrances; and for further assurance: And also a covenant by the said [*second party*] to pay the rents and perform the covenants and agreements reserved and contained in the same indenture of lease, and to indemnify the said [*first party*] therefrom."

Covenants to be contained in assignment.

* *Vide ante*, 46, 165.

It has just been determined by the court of Exchequer, Gray's Inn Hall, 28th July, 1821, *Purvis* v. *Reall*, [*Purvis* v. *Rayer*, 8 Price, 488,] that the vendor of a leasehold estate held under a city corporation, cannot compel specific performance without producing the lessor's title. The same doctrine must equally apply to an agreement for a partition; and therefore the contrary should be expressly mentioned, when it is the agreement of the parties.

Vendor of city corporation lease must produce lessor's title.

EXCHANGE OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

in possession in fee simple of the said dwelling-house and garden (*d*), that he, the said [*first party*], or his heirs, and all other necessary parties, on or before the day of next, on receiving from the said [*second party*] such sum of money, if any, as shall be awarded for equality of exchange (*e*), shall and will, with proper covenants for title, for quiet enjoyment, and for further assurance, and other proper and necessary covenants, execute a proper conveyance of the fee simple and inheritance in possession, of the said dwelling-house and garden, with the appurtenances, free from incumbrances, unto the said [*second party*], his heirs, appointees, or assigns, in consideration of such money, if any, for equality of exchange, and of a conveyance of the fee simple and inheritance in possession, free from incumbrances, of and in the two closes of land, with the appurtenances, hereinafter mentioned: AND THE SAID [*second party*], for himself, his heirs, executors, and administrators, doth hereby agree with the said [*first party*], his (*f*) heirs and assigns, that he, the said [*second party*], or his (*g*) heirs, shall and will, on or before the said day of next, at his and their own expense, make and deliver to the said [*first*

COPYHOLD.

(*d*) If the premises are copyhold of inheritance, say, "according to the custom of the manor of in the county of , of which the same premises are holden,"

COPYHOLD. To surrender,

(*e*) "duly surrender the same according to the custom of the said manor, to the use of the said [*second party*], his heirs or assigns, or as he or they shall direct, to be holden at the will of the lord, according to the custom of the said manor, by the rents and services therefore due and of right accustomed, but free from all incumbrances whatsoever: AND ALSO execute a deed of covenants for the title, for quiet enjoyment, and for further assurance, and all other proper and necessary covenants,"

and execute deed of covenants.

LEASEHOLDS.

(*f*) If the premises are leasehold, say, "executors, administrators, and assigns,"

(*g*) "executors, or administrators,"

party], his agent, or attorney, a full, complete, and perfect abstract, in the usual manner, of the title of him the said [*second party*], to ALL THOSE two closes of land, situate, &c. with the appurtenances (*h*): AND if the counsel of the said [*first party*], should be of opinion that the said [*second party*] has a good title to the inheritance in posses- EXCHANGE OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

(*h*) If the premises are leasehold, say, LEASEHOLD.

"held by the said [*second party*], for the remainder of a term of years, granted by an indenture bearing date on or about the day of , 18 , and made between [*lessor*], of the one part, and [*lessee*], of the other part, subject to the rents, covenants, and conditions, therein contained; but the said [*second party*] shall not be required to produce the lessor's title *: AND if the counsel of the said [*first party*], should be of opinion that the said [*second party*] has a good title to the said two closes of land, for the remainder of the said term, that he the said [*second party*], and all other necessary parties, on or before the day of next, on receiving from the said [*first party*], such sum of money, if any, as shall be awarded for equality of exchange, shall and will assign and assure the said two closes of land to the said [*first party*], for the residue of the said term, free from incumbrances, but subject as aforesaid, in consideration of such money, if any, for equality of exchange, and of a conveyance of the said dwelling-house and garden; in which conveyance shall be contained covenants, by the said [*second party*], that notwithstanding any act done by the said [*second party*], (or the person under whom he claims,) the lease is valid, not forfeited, surrendered, or determined, or become void or voidable; that the said [*second party*] has, or the assigning parties have, good right to assign; that the rent has been paid, and the covenants performed, to the time of assigning; for quiet enjoyment during the term, free from incumbrances; and for further assurance: AND ALSO a covenant by the said [*first party*] to pay the rents, and perform the covenants and agreements reserved and contained in the same indenture of lease, and to indemnify the said [*second party*] therefrom." Reference to lease. To assign.

* *Vide ante*, 261.

EXCHANGE OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

sion in fee simple of the said two closes of land (*i*), that he the said [*second party*], or his heirs, and all other necessary parties, on or before the day of next, on receiving from the said [*first party*] such sum of money, if any, as shall be awarded for equality of exchange (*k*), shall and will, with proper covenants for title, for quiet enjoyment, and for further assurance, and other proper and necessary covenants, execute a proper conveyance of the fee simple and inheritance in possession of the said two closes of land, with the appurtenances, free from incumbrances, unto the said [*first party*], his heirs, appointees, or assigns, in consideration of such money, if any, for equality of exchange, and of a conveyance of the fee simple and inheritance in possession, free from incumbrances, of and in the said dwelling-house and garden, with the appurtenances: AND *it is hereby mutually agreed* by the said parties, that it shall, at the joint expense of both parties, be referred to [*commissioners*], of, &c. and in case of their differing in opinion, then by an umpire, to be chosen by them, to decide and determine whether any and what sum of money shall be paid for equality of exchange, by either of the said parties unto the other of them (*m*); AND that it shall be expressly declared in the said conveyances to each of the said parties, that neither

Commissioners or umpire to determine equality of exchange money.

No implied warranty.

COPYHOLD.

(*i*) If the premises are copyhold of inheritance, say, "according to the custom of the manor of , in the county of , of which the same premises are holden,"

COPYHOLD.

(*k*) "duly surrender the same, according to the custom of the said manor, to the use of the said [*first party*], his heirs or assigns, or as he or they shall direct, to be holden at the will of the lord, according to the custom of the said manor, by the rents and services therefore due, and of right accustomed, but free from all incumbrances whatsoever: AND ALSO execute a deed of covenants for the title, for quiet enjoyment, and for further assurance, and all other proper and necessary covenants,"

(*m*) It may be prudent to add clause for appointing new commissioners, *ut ante*, 231.

of them shall re-enter on the lands conveyed in exchange, in consequence of any defect of title (*n*): And that each of the said parties shall, at the time of executing the said conveyances, deliver to the other the several title deeds in

EXCHANGE OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

To deliver title deeds.

(*n*) If it be the agreement, instead of the above clause, say,

"And that there shall be contained in the said conveyances to each of the said parties, the usual clause of re-entry on the lands given in exchange, on eviction from any part of the lands received in exchange."

Eviction clause.

At common law, if the word *excambium* or *eschange* be used in the conveyance of lands of freehold or inheritance, Co. Litt. 378. b. 389. a. Gilb. Ten. 176. and either party be evicted, through defect of the other's title, either of the whole, or a part of the lands or other hereditaments, taken in exchange, or a part of the estate in them, such as an estate of freehold when the fee is received in exchange, the whole exchange, at the option of the evicted party, is avoided, and he may reenter into the whole of the estate given in exchange, by virtue of the implied warranty contained in all exchanges. Perk. s. 253. 261. 2 Bla. Com. 323. Co. Litt. 50. b. 174. a. Shep. Touchs. 126. 290. But this power of reentry neither extends to an assignee, or devisee; *Bustard's case*, 4 Co. 121. b. Co. Litt. 384. Noy's Maxims, 61. 5th ed. 155. 9th ed. 1 Roll. Abr. 815. *Eschange*, (N) pl. 1. 3 Wilson, 496. nor, as it seems, to an exchange effected by a conveyance to uses on the seisin of a stranger. *Vide ante*, 196, 197; and the dissertation on *Private Acts of Parliament*, infra IX. Eviction clause.

Warranty on exchange.

When there is either an express or implied warranty, it may sometimes be prudent, although it is not usual, for the exchangers to execute covenants for producing the title deeds mutually received, or for each to retain copies of those given; because there is a floating opinion, unsanctioned by practice, that when lands received on exchange, &c. are sold, the vendor ought to produce an abstract of the title, and the deeds relating to the lands *given*, as well as those *received* in exchange, as the purchaser might, under an express or implied warranty, be evicted from the lands purchased, on account of a defect in the title to the lands given in exchange. [The very usual demand of the deeds relating to the lands *given*, as well as those *received* in exchange, can hardly be called "a floating opinion unsanctioned by practice." Most conveyancers certainly examine both titles, and the omission of such practice would be very dangerous. See on this, 1 Prest. Abs. 87. 301 *Ed.*]

Covenant for production of title deeds given on exchange.

EXCHANGE OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

his custody or power relating to the lands conveyed in exchange (*o*): And that each of the said parties shall pay the costs and charges for preparing and ingrossing the (*p*) conveyance of the premises received by him in exchange; *And* the costs and charges of any fine, recovery, or assignment of outstanding terms not already assigned to attend the inheritance of the premises given by him in exchange; *And* the fees and charges of his own counsel and solicitor (*q*). In witness, &c.

Expenses of conveyances.

Fines, &c.

Fees of counsel, &c.

(*o*) If the title deeds relate to lands of greater value, *vide ante*, 85.

COPYHOLD.

(*p*) If the premises are copyhold, say,

"surrender of and deed of covenants relating to the premises received by him in exchange; *and* the costs and charges of any customary recovery of the premises given by him in exchange;"

(*q*) And if it be the agreement of the parties, add *Clause for liquidated damages*, ut ante, 148.

AGREEMENT *for an* EXCHANGE, *between a Mayor and Corporation and a private Individual, rather specially drawn.* EXCHANGE.

ARTICLES OF AGREEMENT made and entered into the day of 18 ; BETWEEN the mayor, bailiffs, burgesses, and the commonalty of the town of , of the one part, and [A. B.] of, &c. of the other part, as follows : Parties.

THE said mayor, bailiffs, and commonalty, do hereby for themselves and their successors, agree to and with the said [A. B.], his heirs and assigns, That the said mayor, bailiffs, burgesses, and commonalty, or their successors, shall and will, by proper conveyances and assurances in the law, convey and assure according to their estate, right, and interest therein, or so far as they can or lawfully may, unto and to the use of the said [A. B.] his heirs and assigns, ALL, &c. (*describe the estate pretty fully*), and the extreme eastern point thereof to be the westernmost point towards the south of [H.] close; and the extreme western point thereof to be the westernmost point towards the south of [B.] close; and from the said extreme eastern and extreme western points, extending to the north, east, and southwest, as far as the sea usually flows at the full tide; and the extreme southern point thereof to be where the said [A. B.] his heirs or assigns, shall, within the space of seven years next ensuing the date of these presents, embank the same; such embankment to begin at the westernmost point of [H.] close, and to be carried on from thence to [B.] close, in a continued line or boundary; but such line or boundary to be direct, oblique, curved, or undulat- Corporation agree to convey in exchange. Parcels. Special mode of pointing out the boundaries.

EXCHANGE.

ing, as the engineer to be employed by the said [A. B.] his heirs or assigns, shall find the soil most proper for the purpose of raising the said embankment, and making the same effectual and permanent, according to the agreement and covenants hereinafter agreed to be entered into on the part of the said [A. B.]; *which* said ground, land, and soil, is more particularly delineated and described in the plan or ground-plot thereof hereunto annexed, and distinguished by a green colour. AND THE SAID [A. B.] doth hereby for himself, his heirs, executors, and administrators, agree that he the said [A. B.] his heirs or assigns, shall and will, in the conveyance or assurance so to be made to him by the said mayor, bailiffs, burgesses, and commonalty as aforesaid, enter into a proper covenant and agreement for raising, at the costs and charges of the said [A. B.], the said embankment within the space of seven years from the date of such conveyances and assurances, in such manner as shall not be prejudicial to the said town of ; and for keeping up and maintaining the same at his and their costs and charges, and to promise to repair the same during the space of seven years. PROVIDED ALWAYS, *and it is hereby agreed* between the said mayor, bailiffs, burgesses, and commonalty, and the said [A. B.], that nothing herein, or in the said intended conveyances and assurances to be contained, shall extend to, or be deemed or construed to extend to a warranty, covenant, or undertaking by the said mayor, bailiffs, burgesses, and commonalty, of or for their title to the said ground, &c. so agreed to be conveyed by them unto and to the use of the said [A. B.], his heirs and assigns as aforesaid, or any part thereof, or to entitle the said [A. B.], his heirs, executors, administrators, or assigns, to bring, commence, sue forth, or prosecute any action, suit, claim, or demand whatsoever, against them the said mayor, bailiffs, burgesses, and commonalty, or their successors, for, upon, by reason, or on account of his, the said [A. B.], his heirs or assigns, being evicted of or from, or being disturbed in the possession of the said ground, &c. or any part thereof, by any person or persons whomsoever, *except* the said mayor, bailiffs, burgesses, or commonalty. AND THE SAID [A. B.] for himself, his heirs, executors, and administrators, doth hereby agree to and with the

Reference to plan.

Agreement with the corporation to make an embankment, and keep it in repair.

Proviso, that corporation shall not be considered as warranting the title.

Covenant to convey to corporation.

EXCHANGE.

mayor, bailiffs, burgesses, and commonalty of the said town of , That he the said [A. B.], his heirs or assigns, shall and will, as soon as conveniently may be, by proper conveyances and assurances in the law, grant and convey unto the said mayor, bailiffs, burgesses, and commonalty, and their successors, ALL (*describe the estate*); AND THE SAID mayor, bailiffs, burgesses, and commonalty, for themselves and their successors, do further agree to and with the said [A. B.], his heirs and assigns, by these presents, That if the said [A. B.], his heirs or assigns, should at any time hereafter apply for a proper license from the crown, or for an act of parliament for a grant or confirmation to him the said [A. B.], his heirs or assigns, of the said ground, &c. so agreed to be conveyed by them the said mayor, bailiffs, burgesses, and commonalty of the said town of , unto and to the use of the said [A. B.], his heirs and assigns as aforesaid, or any part thereof, Then and in such case the said mayor, bailiffs, burgesses, and commonalty, shall and will, upon the request of the said [A. B.], his heirs or assigns, join and concur with the said [A. B.], his heirs or assigns, in such application, and testify their consent thereto, and do all such other reasonable acts and deeds for facilitating and promoting the success of such application, and assisting the said [A. B.], his heirs and assigns, therein, As by the said [A. B.], his heirs, or assigns, or his or their counsel, learned in the law, shall be reasonably advised, or devised and required. AND *it is hereby further agreed* between and by the said mayor, bailiffs, burgesses, and commonalty, and the said [A. B.], that the said [A. B.], his heirs, executors, administrators, or assigns, shall pay all fees, charges, duties, and expenses, as well attending the preparing and engrossing these presents, as the preparing, settling, and engrossing the several conveyances and assurances so agreed to be made and executed by the said mayor, bailiffs, burgesses, and commonalty, and by the said [A. B.] respectively, as aforesaid, and the obtaining such license from the crown, and act of parliament as aforesaid. IN WITNESS, &c.

Parcels.

Covenant from corporation, that should [A. B.] apply for king's license, or act of parliament, to confirm exchange, they would facilitate same.

Agreement respecting expenses.

PRIVATE ACT TO EXCHANGE ADVOWSON WITH A BISHOP.

AGREEMENT *to apply for a Private Act of Parliament for effectuating an* EXCHANGE *of* ADVOWSONS *between a Bishop Patron, in right of his Episcopal See, and a Lay Patron.*

ARTICLES OF AGREEMENT made the day of , in the year of our Lord, 18 ; BETWEEN the Right Reverend Father in God, Lord Bishop of , of the one part, and [A. B.], of, &c. of the other part.

Parties.

Recital— of seisin of bishop in right of see;

of [A. B.] in fee;

and his desire for exchange..

WHEREAS the said Lord Bishop of , in right of his episcopal see, is seised of the advowson, or right of patronage and presentation of, in, and to the rectory and parish church of [A.] in the county of : AND the said [A. B.] is seised in fee simple of the advowson, or right of patronage and presentation of, in, and to the rectory and parish church of [B.] in the county of : AND the said rectory of [B.] is of greater value than the said rectory of [A.]; but in consequence of the vicinity of the said parish of [A.] to the principal residences and estates of the said [A. B.] he is desirous of obtaining the said advowson of the said rectory of [A.] in exchange for the said rectory of [B.]; and the said Lord Bishop of has consented to such exchange; but the same cannot be effected without the aid and authority of parliament (*a*): NOW THEREFORE the said Lord Bishop of

Agreement by bishop to per-

(*a*) The necessity of an act of parliament in this case is evident; because all alienations by ecclesiastical persons, of property belonging to them in their ecclesiastical capacity, except leases for twenty-one years, or three lives, are declared void, by 1 El. c. 19. 13 El. c. 10. 14 El. c. 11. 18 El. c. 11. 1 Jac. c. 3. *Et vide ante*, 63.

[By the 55 Geo. III. c. 147, the incumbent of any ecclesiastical benefice, with the consent of the patron and the bishop of the diocese, is enabled to exchange the parsonage house or glebe lands for others more convenient. See also 56 Geo. III, c. 52. 1 Geo. IV, c. 6. and 6 Geo. IV, c. 8, which regulate and extend this privilege. *Ed.*]

doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [A. B.] his heirs and assigns, that it shall and may be lawful for the said [A. B.], his heirs or assigns, at his or their own costs and charges, at any time in the next session of parliament, to apply for a private act of the legislature for the purpose of vesting and settling the said advowson of the said rectory and parish church of [B.] in and upon the said Lord Bishop and his successors for ever, in lieu of and in exchange for the said advowson of the rectory and parish church of [A.]; AND for vesting and settling the said advowson of the rectory and parish church of [A.] in and upon the said [A. B.] his heirs and assigns for ever; *With* cross eviction and general saving clauses; *And* any other usual or proper clauses and provisions which parliament may permit: AND ALSO that he the said Lord Bishop shall and will sign the petition for the said private act, and do every other act and thing which may be necessary on his part to procure the same to be passed into a law, in the next session of parliament. AND THE SAID [A. B.] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said Lord Bishop, his executors and administrators, that he the said [A. B.] shall and will in due time prepare and sign the said petition for the said private act, and do every other previous and subsequent act and thing which may be necessary on his part to procure the same to be passed into a law, in the next session of parliament: AND ALSO shall and will bear, pay, and discharge the costs and charges for these presents, and a duplicate hereof, and all the costs, charges, and expenses in any manner attending the soliciting, passing, and printing the said act, and every other expence relating thereto; AND therefrom and from every part thereof respectively save, defend, and keep harmless the said Lord Bishop, his executors and administrators. IN WITNESS, &c.

PRIVATE ACT TO EXCHANGE ADVOWSON WITH A BISHOP.

mit A. B. to apply for private act,

for vesting the advowson of [B.] in the bishop.

And for vesting the advowson of [A.] in [A. B.]

With eviction, &c. clauses.

And bishop to consent thereto.

Agreement by [A. B.] to prepare petition, &c.

and pay all costs,

and indemnify the bishop therefrom.

ENFRANCHISEMENT.

AGREEMENT *for* ENFRANCHISEMENT *of Copyhold Premises.*

Parties.

ARTICLES OF AGREEMENT made and entered into, this day of 18 , BETWEEN [*lord*], of, &c. esquire, lord of the manor of , in the county of , and seised of an estate of inheritance in fee simple in the same manor, of the one part; and [*tenant*], of, &c. one of the copyhold tenants of the said manor, of the other part.

Agreement by lord to enfranchise.

FIRST, the said [*lord*], for himself, his heirs, executors, and administrators, doth agree with the said [*tenant*], to sell to him the fee simple and inheritance (*a*), of and in

Parcels.

ALL THAT messuage, &c. with the commons and commonable rights (*b*), privileges, and appurtenances, thereto

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Dominus pro tempore.

(*a*) A lord *pro tempore*, can only enfranchise for his own time: but under an express power, or as it seems, under the usual powers of sale and exchange, tenants for life of manors in strict settlement, may enfranchise in fee. [See *St. Paul* v. *Dudley*, 15 Ves. 167; and *Wilson* v. *Allen*, 1 Jac. & W. 611.]

Enfranchisement extinguishes common, unless expressly granted.

(*b*) Immediately on the lands being enfranchised in fee, they become severed from the manor, and held of the lord above, under the same tenure and services as the former or mesne lord held; therefore all rights and privileges annexed to the copyholder's estate, as such, must be done away; as the estate by copy, to which they attached, has ceased to exist: thus, if a copyholder has common of pasture or estovers in right of his copyhold, and the copyhold be enfranchised, the common is gone, since the copyhold is gone in right of which it was claimed. *Dawson* v. *Hunter*, Noy, 136. [*Roe* v. *Briggs*, 16 East, 406.] As the estate is no longer copyhold, or even held of the manor, all customs relative to copyholds within the manor must fail as to the premises enfranchised. Such commonage will not pass by the words "*with the*

belonging or appertaining, situate, &c.; now held for an estate of inheritance (*c*) by the said [*tenant*], by copy of court roll, according to the custom of the said manor, free from incumbrances, and absolutely enfranchised and discharged from all manner of rents, fines, heriots, fealty, suits, and services whatsoever, at or for the price or sum of pounds: AND that he the said [*lord*], shall within (*one*) month from the date hereof, at his own expense, make and deliver to the said [*tenant*], a full and perfect abstract of the title of him the said [*lord*], in the usual manner, to the fee simple and inheritance of the said manor: AND ALSO that the said [*lord*], or his heirs, and all other necessary parties, shall within (*two*) months from the date hereof, on receiving the said purchase money, at the costs and charges of the said [*tenant*], execute a proper conveyance, with the usual covenants for the title, for quiet enjoyment, and for further assurance, for granting, conveying, and assuring, the fee simple and inheritance of the said messuage, &c. with the commons and commonable rights, privileges, and appurtenances thereto belonging and appertaining, free from incumbrances, and enfranchised as aforesaid, unto the said [*te-*

ENFRANCHISEMENT.

To deliver abstract.

To execute conveyance.

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appurtenances," in the deed of enfranchisement; and it cannot be continued without special and express words. *Marsham* v. *Hunter,* Cro. Jac. 253. Yelv. 189. But equity will, where it appears to have been the intention of the parties, that it should be preserved, decree its continuance, although it would be extinct at law. *Styant* v. *Staker,* 2 Vern. 250. 1 Watk. Cop. [369]. Gilb. Ten. 224. 441. Com. Dig. *Copyhold,* (K. 6). 6 Vin. Abr. 214, 215. 1 Eq. Ca. Abr. 104. pl. 10.

(*c*) If the copyholder have only a particular estate in the premises, and he take a conveyance of the freehold in fee, it shall be an absolute enfranchisement; the copyhold tenure shall be extinct for ever. But the enfranchisement shall be for the benefit of those in remainder, who would have taken the copyhold interest, had the enfranchisement never taken place, as well as for that of himself; and a Court of Equity will, accordingly, direct a conveyance from the heirs at law of the particular tenant to him in remainder, on his paying a proportionate part of the consideration advanced for the enfranchisement. *Wynne* v. *Cookes,* 1 Bro. Ch. Ca. 517. 1 Watk. Cop. [364]. [Edit. Coventry 438, n. (1).] *Et vide* Scriven on Copyholds, 616. 2d ed.

Enfranchisement to particular tenant, enures to remainder-man.

ENFRANCHISEMENT.

nant], his heirs and assigns, or as he or they shall direct: AND ALSO that the said [*lord*], shall at his own costs and charges, at the execution of the said conveyance, deliver unto the said [*tenant*], true and attested copies of the several title deeds, evidences, and writings, concerning the said premises; and enter into the usual covenant, to be prepared by and at the expense of the said [*lord*], for producing the originals, at the costs and charges of the said [*tenant*], his heirs or assigns; and to permit him and them from time to time to take or have other true and attested copies thereof, at his or their own costs and charges; but such covenant, nevertheless, to be void, if the said [*lord*] should afterwards sell the said manor, or any part thereof, and deliver the same deeds and writings to the purchaser thereof, and procure such purchaser to enter into the same, or the like covenants: AND ALSO that any fine, recovery, or assignment of attendant terms, not already assigned to attend the inheritance, which may be necessary on the conveyance of the said premises, shall be prepared by and at the costs and charges of the said [*lord*]. AND THE SAID [*tenant*], for himself, his heirs, executors, and administrators, doth agree to pay the said sum of pounds, unto the said [*lord*], on the execution of the said conveyance. AND *it is further agreed*, that each of the said parties shall pay the fees and charges of his own counsel and solicitor. (*If it be the agreement, add* clause, time to be the essence of the contract, and for liquidated damages, *ut ante*, 158, 148.) IN WITNESS, &c. (*a*)

To deliver attested copies,

and covenant for their production.

To pay for fines, &c.

Agreement by tenant to pay purchase money.

Each party to pay his own counsel, &c.

(*a*) [See as to a power to enfranchise under an Act of Parliament, *Wilson* v. *Allen*, 1 J. and W. 620.]

AGREEMENT *by an original Lessor to* BUILD *Part of Premises destroyed by Fire, in consideration of a certain Sum paid to him by an Underlessee:* RELEASE *from original Lessor to Lessee, and from Lessee to Underlessee, of the Covenants of the respective Leases, so far as they relate to the Buildings not to be re-erected; and* DEFEAZANCES *reviving the Conditions of the Leases, which were partially dispensed with by the Releases.*

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

THIS INDENTURE, made the day of 18 , BETWEEN [*lessor*], of, &c. of the first part [*lessee*], of, &c. of the second part, and [*underlessee*], of, &c. of the third part: WHEREAS by indenture of lease, bearing date on or about the day of 179 , and made or mentioned to be made between the said [*lessor*] of the one part, and the said [*lessee*] of the other part, for the considerations therein mentioned, the said [*lessor*] did demise and lease unto the said [*lessee*], *All that* manor, or reputed manor, called ; *And all that* messuage or mansion house, with the coach house, stable, yards, gardens, and orchards thereto belonging; *And also all that* messuage, tenement, or farm, adjoining to the said first mentioned messuage or mansion house, and together therewith, then in the possession of [*tenant*], and commonly called or known by the name of Farm; the said premises being situate, lying, and being, in the parishes of , or one of them, in the county of ; *Together* with all and singular the yards, gardens, orchards, backsides, barns, stables, sheephouses, granaries, cowhouses, outhouses, edifices, and buildings; *And also all those* several closes, pieces, or parcels of

Parties.

Recital of original lease.

Parcels.

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

arable land, ley, meadow, pasture, wood, and wood ground, lying and being in aforesaid, or one of them, to the said secondly mentioned messuage, tenement, or farmhouse belonging and therewith then and theretofore usually held, used, occupied, and enjoyed, and thereinafter particularly mentioned and described; *And all* other lands, grounds, tenements, and hereditaments in the said parishes of , or either of them, or elsewhere near adjoining, then in the occupation of the said [*tenant*], as tenant to the said [*lessor*] (*Except* as therein is excepted): *To hold* the same unto the said [*lessee*], his executors, administrators, and assigns, from the

Habendum.

day of then next, for the term of forty years;

Reddendum.

At the yearly rent of pounds, payable half yearly, as therein mentioned; *and also* for every acre of the meadow or pasture ground he the said [*lessee*], his executors, administrators, or assigns, should ear, plough, dig up, or convert into tillage, the yearly sum of (*five*) pounds, payable as therein mentioned: *And subject* to several covenants in the said indenture of lease contained; *Among*

Covenants by lessee;

to repair.

which the said [*lessee*] did for himself, his heirs, executors, administrators, or assigns, covenant, promise, and agree to and with the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, should, at his and their own proper costs and charges, from time to time, and at all times during the continuance of the said demise, well and sufficiently repair, amend, support, sustain, maintain, scour, empty, cleanse, preserve, and keep in repair, the said two several messuages or tenements, and all and singular the outhouses, edifices, buildings, barns, stables, sheephouses, granaries, cowhouses, gates, pales, rails, stiles, hedges, ditches, and fences, belonging to the said thereby demised premises, he the said [*lessor*], his heirs and assigns, upon reasonable request and timely notice to him or them made and given in writing, finding and allowing on the said premises, or within five miles distance thereof (after the sum of hundred pounds should have been laid out and expended in repairing the said messuages or tenements, and the outbuildings thereto belonging, in manner therein mentioned, and which hath since been done accordingly), suf-

ficient and necessary rough timber on the stem for the doing thereof (that is to say), so far as concerned or related to the said demised premises as they then stood, but not as to any new erections, buildings, or additions, which should be erected, built, or made thereon or thereto (such rough timber to be cut down and carried to the said thereby demised premises at the charges of the said [*lessee*], his executors, administrators or assigns); and that he the said [*lessee*], his executors, administrators, or assigns, the said demised premises so repaired, amended, and kept in repair as aforesaid, at the end, expiration, or other sooner determination of the said lease, should leave and yield up into the hands and quiet possession of the said [*lessor*], his heirs or assigns: *And also subject* to the conditions therein contained, such conditions being to the same effect as the conditions contained in the defeazance hereinafter inserted on the part of the said [*lessee*], his executors, administrators, and assigns: *And* in which said indenture of lease is contained a covenant on the part of the said [*lessor*], his heirs, executors, administrators, and assigns, that he the said [*lessor*], his heirs or assigns, should from time to time, and at all times (after the said sum of hundred pounds should have been laid out and expended in manner therein mentioned) during the continuance of the said demise, at seasonable times for cutting timber, find, provide, and allow unto the said [*lessee*], his executors, administrators, or assigns, on the premises thereby leased, or within five miles distance therefrom, on reasonable notice in writing for that purpose, all necessary and sufficient rough timber on the stem for the repairing and amending thereof (that is to say) so far as concerned the said demised premises as they then stood, but not for the making, repairing, or amending, of any new erections, buildings, or additions, which should or might be erected, built, or made thereon or thereto; the said timber to be cut and carried to the said thereby demised premises at the charges of the said [*lessee*], his executors, administrators, or assigns. AND WHEREAS by indenture of lease, bearing date on or about the day of 18 , and made, or expressed to be made, between the said [*lessee*], of the one part, and the said

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

Conditions.

Covenant by lessor to allow rough timber.

Recital of underlease.

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

[*underlessee*], of the other part, the said [*lessee*], for the considerations therein mentioned, did demise and lease unto the said [*underlessee*], *All that* the said manor or reputed manor, messuage, or mansion house, coach house, stable, yards, gardens, orchards, backsides, barn, stable, granaries, cowhouses, outhouses, edifices and buildings, closes, pieces or parcels of arable land, ley, meadow, pasture, wood and woodground, by the same or a like description as hereinbefore contained: *And all* other lands, grounds, tenements, and hereditaments, in the said parishes of or either of them, or elsewhere near adjoining, then late in the occupation of the said [*tenant*], but then or late in the occupation of the said [*lessee*] (*Except* as in the now recited indenture of lease is excepted): *To hold* the same unto the said [*underlessee*], his executors, administrators, and assigns, from the feast of the annunciation of the blessed virgin Mary then last, for the term of years, and one half of another year wanting one day: *At* the yearly rent of hundred pounds, payable half yearly as therein mentioned, and for the last half year, wanting one day, the rent of (*five*) pounds; *And also* for every acre of the meadow or pasture ground which he the said [*underlessee*], his executors, administrators, or assigns, should ear, plough, dig up, or convert into tillage, the yearly sum of (*five*) pounds, payable as in the same indenture of lease is mentioned: *And subject* to several covenants in the same indenture contained on the part of the said [*underlessee*], his heirs, executors, administrators, or assigns; *Among* which are covenants to the same purport or effect as the covenants hereinbefore recited to be contained on the part and behalf of the said [*lessee*], in the said recited indenture of lease of the day of 179: *And also subject* to the conditions therein contained, such conditions being to the same effect as the conditions contained in the defeazance hereinafter inserted on the part of the said [*underlessee*], his executors, administrators, and assigns: *And* in the which said indenture of lease of the day of 18, is contained a covenant on the part of the said [*underlessor*], his executors, administrators, and assigns, to the same purport or effect as the covenant herein-before recited to be contained in the said

Parcels.

Habendum.

Reddendum.

Covenants by lessee.

Conditions.

Covenants by underlessor.

recited indenture of lease of the day of 179 , on the part of the said [*lessor*], his heirs, executors, administrators, and assigns. AND WHEREAS a barn, wood house, cowhouse, and shed, part of the premises hereinbefore recited to have been demised by the said [*lessor*] to the said [*lessee*], and by him demised to the said [*underlessee*], were, in or about the month of , 18 , partly destroyed and consumed by fire; *And* it hath been agreed by and between the said parties to these presents, that the barn and part of the shed, so destroyed by fire, shall be rebuilt, without rebuilding at any time, during either of the said terms, the woodhouse, cowhouse, and the remaining part of the shed; *And* thereupon it hath been agreed, that the several covenants, agreements, releases, and conditions, hereinafter contained, shall be respectively entered into, given, and revived. AND WHEREAS the said [*lessor*], hath contracted and agreed with the said [*underlessee*], to rebuild the said barn and part of the shed so destroyed by fire as aforesaid, in the manner hereinafter particularly mentioned, on receiving from the said [*underlessee*], the sum of hundred pounds, being the sum which he hath received from the fire office, on account of the damage occasioned by the said fire. NOW THIS INDENTURE WITNESSETH, that for and in consideration of the sum of hundred pounds, of lawful money of the united kingdom of Great Britain and Ireland, current, to the said [*lessor*] paid by the said [*underlessee*], at or before the sealing and delivery of these presents, the receipt of which said sum of hundred pounds he the said [*lessor*] doth hereby acknowledge, and of and from the same and every part thereof, doth acquit, release, and discharge, the said [*underlessee*], his heirs, executors, administrators, and assigns, for ever, by these presents, he the said [*lessor*] doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*underlessee*], his executors, administrators, and assigns, THAT he, the said [*lessor*], his executors or administrators, shall or will, within the space or time of (*six*) calendar months, from the day of the date of these presents, erect, build, and completely cover in and finish, the barn and cattle shed,

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

Recital, that fire destroyed part of premises; only a part of which intended to be rebuilt.

Recital of agreement by lessor to rebuild for a certain sum.

Agreement to build outhouses,

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

set forth in the schedule hereunder written; AND ALSO do, perform, and execute, or cause and procure to be done, performed, and executed, all and singular the works also mentioned in the schedule hereunder written, according to the plan and elevation therein mentioned or contained, the same to be done within the time aforesaid, and in a good, workmanlike, substantial manner: AND ALSO shall and will find and provide such good, proper, and sufficient materials of all kinds whatsoever, as together with, and in addition to the materials not consumed by the said fire, shall be proper and sufficient for erecting the said barn and cattle shed, and completely finishing the said works, buildings, and erections. AND *it is hereby declared and agreed,* by and between the said [*lessor*] and the said [*underlessee*], that in case he the said [*underlessee*], his executors, administrators, or assigns, should direct any more work to be done in or about the said buildings and premises than is contained in the schedule hereunder written, then and in such case the said [*underlessee*], his executors, administrators, or assigns, shall pay or cause to be paid unto the said [*lessor*], his executors, administrators, or assigns, so much money as such extra work, and the materials used therein, shall cost or amount unto, any thing hereinbefore contained to the contrary notwithstanding: AND *it is hereby covenanted and agreed,* by and between the said [*lessor*] and [*underlessee*], that if any dispute or difference should happen or be made between them touching or concerning the said edifices and buildings hereby covenanted to be made and done as aforesaid, or touching or concerning any other matter or thing whatsoever, relating to the work hereby contracted to be done, or such additional or extra work (if any) as aforesaid, Then such dispute or difference shall be left to the determination and award of three indifferent persons, one to be named by the said [*lessor*], his executors, administrators, or assigns, another by the said [*underlessee*], his executors, administrators, or assigns, and the third to be chosen by the said persons so to be named by each of them, the said [*lessor*] and [*underlessee*], and their respective executors, administrators, and assigns, jointly, immediately, or within ten days after notice of such dispute or difference. AND each of

and find materials.

Additional work to be paid for.

Agreement to refer disputes to arbitration.

Covenant to abide by award.

them, the said [*lessor*], and the said [*underlessee*], doth hereby for himself, and his executors and administrators, covenant, promise, and agree, to and with the other of them, his executors and administrators, that they the said [*lessor*] and [*underlessee*] respectively, and their respective executors and administrators, shall and will severally stand to, abide, perform, and keep, the award and determination of the said three persons so to be chosen, or of any two of them, touching the said several matters and things so to be referred to them as aforesaid; So as the same determination be made in writing, under the hands and seals of the said arbitrators, or some two of them, within one calendar month next after such reference. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and also in consideration of ten shillings of like lawful money, to the said [*lessor*] paid by the said [*lessee*], the receipt whereof is hereby acknowledged, he the said [*lessor*] *hath* remised, released, and quit claimed; *and* by these presents *doth* remise, release, and quit claim, the said [*lessee*], his heirs, executors, administrators, and assigns, of and from the said recited covenants of him the said [*lessee*], in the said recited indenture of lease, of the day of , 179 ; *And also* of and from all and all manner of actions, causes of actions, suits, debts, dues, sums of money, contracts, controversies, agreements, promises, damages, judgments, extents, executions, claims, and demands whatsoever, in law and equity, which against the said [*lessee*], his heirs, executors, administrators, and assigns, he the said [*lessor*] ever had, now hath, or which he, his heirs or assigns, hereafter can, shall, or may have, for, upon, or by reason or means of any matter, cause, or thing whatsoever, *So* far only as the same covenant and other matters relate to or concern the repairing, amending, supporting, sustaining, maintaining, preserving, keeping, rebuilding, leaving, and yielding up in repair, the said woodhouse and cowhouse, and shed, and that part of the said shed so destroyed by fire as aforesaid, and which is not intended to be rebuilt as aforesaid. AND THE SAID [*lessee*], for the considerations aforesaid, *hath* remised, released, and quit claimed; *and* by these presents *doth* remise, release,

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

Release of covenants by original lessor, so far as they relate to buildings not to be re-erected.

Release of covenants by original lessee, so far as they re-

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

and quit claim, the said [*lessor*], his heirs and assigns, of and from the said recited covenant of him the said [*lessor*], contained in the said recited indenture of lease, of the day of , 179 ; *And also* of and from all and all manner of actions, causes of actions, suits, debts, dues, sums of money, contracts, controversies, agreements, promises, damages, judgments, extents, executions, claims, and demands whatsoever, in law and equity, which against him, the said [*lessor*], his heirs, executors, administrators, and assigns, he the said [*lessee*], his executors, administrators, or assigns, ever had, now hath, or which he or they hereafter can, shall, or may have, for, upon, or by reason or means of any matter, cause, or thing whatsoever, so far only as the same covenants, and other matters, relate to or concern the finding, providing, and allowing, unto the said [*lessee*], his executors, administrators, or assigns, rough timber for building, repairing, and amending, the said woodhouse and cowhouse, and that part of the shed which has been so destroyed by fire as aforesaid. AND THE SAID (*a*) [*lessee*], doth by these presents, for himself, his executors, administrators, and assigns, grant unto the said [*lessor*], his heirs and assigns, That in case the said yearly rent of hundred pounds, reserved in and by the said recited indenture of lease, of the day of , 179 , or any part thereof, or the said additional yearly rent of (*five*) pounds, (if any such should happen to be or become payable) or any part thereof, should be behind or unpaid by the space of twenty-one days next over or after either of the days of payment whereon the same is, or ought to be paid, and the same rent should be lawfully demanded upon, or at any time after the expiration of the said twenty-one days, and not

late to buildings not to be re-erected.

Defeazance, reviving condition of original lease.

Condition dispensed with in part is dispensed with in whole.

(*a*) As the condition in the original lease embraces non-performance of the covenants, &c.; and as the covenants are partially released by this deed, whereby part of the condition is dispensed with; and as, according to the principle established by *Dumpor's* case, 4 Co. 119, a dispensation of a condition in part is a dispensation in the whole, the condition should therefore be revived; otherwise the lessor would not have power to re-enter on non-payment of the rent, or non-performance of the covenants. See the note *infra*, under ASSIGNMENT OF LEASEHOLD *on purchase*.

paid when demanded; *Or* if breach or default should hereafter happen to be made, in all or any of the covenants and agreements in the said recited indenture of lease contained on the part and behalf of the said [*lessee*], his executors, administrators, and assigns, to be observed and performed (except as hereinbefore is mentioned), *Then* and in either of the said cases, it shall and may be lawful to and for the said [*lessor*], his heirs and assigns, into the premises demised by the said first recited indenture of lease, or any part thereof, in the name of the whole, wholly to re-enter, and the same to have again, retain, repossess, and enjoy, as in his and their first and former estate and estates, and the said [*lessee*], his executors, administrators, and assigns, and all other the tenants and occupiers of the same, thence to expel and remove, any thing herein or in the said first recited indenture of lease contained to the contrary thereof in any wise notwithstanding.

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

Release of covenants by underlessor, so far as they relate to buildings not to be re-erected.

AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and also in consideration of ten shillings of like lawful money, to him the said [*underlessor*] paid by the said [*underlessee*], the receipt whereof is hereby acknowledged, he the said [*underlessor*] *hath* remised, released, and quit claimed, *and* by these presents, *doth* remise, release, and quit claim the said [*underlessee*], his heirs, executors, administrators, and assigns, of and from the covenants of him, the said [*underlessee*], in the said recited indenture of lease, of the day of 18 ; *and also* of and from all and all manner of actions, causes of actions, suits, debts, dues, sums of money, contracts, controversies, agreements, promises, damages, judgments, extents, executions, claims, and demands whatsoever, in law and equity, which against the said [*underlessee*], his heirs, executors, administrators, and assigns, he the said [*underlessor*] ever had, now hath, or which he, his executors, administrators, or assigns, hereafter can, shall, or may have, for, upon, or by reason or means of any matter, cause, or thing whatsoever, so far only as the same covenants and other matters relate to or concern the repairing, amending, supporting, sustaining, maintaining, preserving, keeping, rebuilding, leaving, and yielding up in

TO BUILD; PARTIAL RELEASE OF COVENANT AND DEFEAZANCE REVIVING CONDITION.

repair, the said woodhouse and cowhouse, and that part of the said shed so destroyed by fire as aforesaid, which is not to be rebuilt. AND THE SAID [*underlessee*], for the same considerations aforesaid, *hath* remised, released, and quit claimed, *and* by these presents, *doth* remise, release, and quit claim, the said [*underlessor*], his heirs, executors, administrators, and assigns, of and from the covenant of him the said [*underlessor*], contained in the said recited indenture of lease, of the day of , 18 ; *and also* of and from all and all manner of actions, causes of actions, suits, debts, dues, sums of money, contracts, controversies, agreements, promises, damages, judgments, extents, executions, claims, and demands whatsoever, in law and equity, which against him, the said [*underlessor*], his heirs, executors, administrators, and assigns, he the said [*underlessee*], his executors, administrators, or assigns, ever had, now hath, or which he or they hereafter can, shall, or may have, for, upon, or by reason or means of any matter, cause, or thing whatsoever, so far only, as the same covenants and other matters relate to or concern the finding, providing, and allowing, unto the said [*underlessee*], his executors, administrators, or assigns, rough timber for building, repairing, and amending, the said woodhouse and cowhouse, and that part of the said shed, which has been so destroyed by fire as aforesaid, and which is not intended to be rebuilt as aforesaid. AND THE SAID [*underlessee*], doth by these presents, for himself, his executors, administrators, and assigns, grant unto the said [*underlessor*], his executors, administrators, and assigns, That in case the said yearly rent of hundred pounds, reserved in and by the said recited indenture of lease, of the day of , 18 , or any part thereof, or the said additional yearly rent of (*five*) pounds an acre, (if any such should happen to be, or become payable) or any part thereof should be behind or unpaid by the space of twenty-one days next over or after either of the days of payment whereon the same is or ought to be paid, and the same rent should be lawfully demanded upon, or at any time after the expiration of the said twenty-one days, and not paid when demanded; *Or* if breach or default should hereafter happen to be

Release of covenants by underlessee, so far as they relate to buildings not to be re-erected.

Defeazance, reviving condition by underlessee.

made in all or any of the covenants and agreements in the said last mentioned indenture of lease contained on the part and behalf of the said [*underlessee*], his executors, administrators, and assigns, to be observed and performed, (except as hereinbefore is mentioned) *Then*, and in either of the said cases, it shall and may be lawful to and for the said [*underlessor*], his executors, administrators, and assigns, into the said premises by the same indenture of lease demised, or any part thereof in the name of the whole, wholly to re-enter, and the same to have again, retain, repossess, and enjoy, as in his and their first and former estate, and the said [*underlessee*], his executors, administrators, and assigns, and all other the tenants and occupiers of the same, thence to expel and remove, any thing herein or in the said last mentioned indenture of lease contained to the contrary thereof in any wise notwithstanding. AND *it is hereby agreed* that the new barn and cattle shed, to be built or rebuilt, pursuant to the covenant hereinbefore contained, on the part of the said [*lessor*], shall be and be considered as a barn and shed, within the scope and compass of the several covenants contained in the said several indentures of lease, and the condition introduced into these presents. IN WITNESS, &c.

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

New barn, &c. to be deemed a barn, &c. within the scope of covenants in lease.

TO PERMIT OBSTRUCTION TO ANCIENT LIGHTS.

AGREEMENT *to permit the Continuance of Obstruction to ancient* LIGHTS.*

ARTICLES OF AGREEMENT indented, made, and entered into the day of 18 ;

Parties. BETWEEN [A. B], of, &c. of the one part, and [C. D.], of, &c. of the other part.

Recital of having ancient lights, and obstruction by buildings. WHEREAS there are two ancient window lights on the south side of the dwelling-house of the said [A. B.], situate at aforesaid, and which window lights have been totally obstructed by a dwelling-house and premises which the said [C. D.] hath lately erected upon his lands adjoining thereto. AND WHEREAS it hath been agreed between the said [A. B.] and [C. D.] for the purpose of preventing disputes between the owners and occupiers of the said two dwelling-houses, to enter into the declaration or agreement following, that is to say; AND FIRST the said [C. D.] admits and declares, that the said [A. B.] was well entitled to the said window lights; AND that the said [A. B.] voluntarily, and from motives of friendship, and good neighbourhood, agreed, that the said [C. D.] might obstruct them, as before mentioned. AND TH SAID [A. B.] on his part, agrees that the said window lights shall and may for ever remain obstructed as before mentioned; AND he hereby releases to the said [C. D.] his heirs and assigns, *All* actions, suits, claims, and demands whatsoever, on account thereof. IN WITNESS, &c.

To prevent disputes.

Admission of right to lights.

And agreement to allow obstruction.

Release of all actions, &c.

Injunction. * [As to injunctions for restraining the obstruction of ancient lights, see *Attorney-General* v. *Nicholl*, 3 Meriv. 687. and *Wystanley* v. *Lee*, 2 Swans. 333. It seems that the proprietor of a window of a very recent construction may maintain an action. See *Riviere* v. *Bower*, 1 Ry. and Moo. 24. *Ed.*]

AGREEMENT *to* CHARGE LANDS *with the Payment of a Sum of Money, secured by Bond.*

TO CHARGE LANDS WITH MONEY SECURED BY BOND.

I, the within named [*obligor*] do hereby acknowledge and declare, that previously to, and as a consideration and inducement to the within named [*obligee*] for advancing to me the sum of thousand pounds, secured by the within written bond, I did agree to charge, and in pursuance of that agreement, I DO HEREBY charge, and for myself and my heirs do agree to do and execute every act and deed that shall by the said [*obligee*], his executors, administrators, or assigns, or his or their counsel, be reasonably required or deemed necessary for the better and more effectual charging, either by mortgages in fee or for years, or otherwise, ALL my freehold and copyhold messuages, lands, and tenements, situate and being in the several parishes of , or elsewhere in the county of , with the payment of the said sum of thousand pounds, at the time within mentioned and appointed for the payment thereof, with interest for the same after the rate of five pounds for a hundred pounds by the year. WITNESS, my hand, this day of 18 .

Acknowledgment of agreement.

Agreement to charge.

Parcels.

WITNESS

TO EMPLOY INSURANCE BROKER.

AGREEMENT *for employing an* INSURANCE BROKER.

ARTICLES OF AGREEMENT indented, made, concluded, and fully agreed on this day of George 4th, &c. and in the year 18 ;

Parties. BETWEEN [*underwriter*], of, &c. of the one part, and [*broker*], of, &c. of the other part.

Recitals. WHEREAS the said [*broker*] is an insurance broker, residing at aforesaid. AND WHEREAS the said [*underwriter*] is desirous of becoming an underwriter or insurer of ships or vessels, and of merchandize on board ships or vessels, and of employing the said [*broker*] as his broker or agent for the purpose of making and effecting such insurances, and for receiving the premiums of insurance, under and subject to the terms and agreements hereinafter contained.

Underwriter authorises broker to act as his agent, and use his name and credit, under certain conditions.

FIRST, the said [*underwriter*] doth hereby agree with the said [*broker*], that it shall or may be lawful to and for the said [*broker*], until orders or notice to the contrary, to act as the agent or broker of the said [*underwriter*], and to use the name and engage the credit of the said [*underwriter*] as an insurer or underwriter of any sum or sums of money not exceeding pounds, on any ship or vessel, or goods and merchandizes in any ship or vessel, so as the responsibility of the said [*underwriter*] on any one risque, either on a ship or vessel, or goods or merchandize in a ship or vessel, or both jointly or separately, may not exceed the sum of pounds at one and the same time, and so as the name of the said

[*underwriter*] as an insurer or underwriter shall be used as to such ships or vessels, goods or merchandize only, on which insurances shall be transacted at the office or house of business of the said [*broker*] in the regular and ordinary course of his business as an insurance broker, and on such risques only as are insurable in the common and ordinary course of business (that is to say), at a premium not exceeding pounds per centum on the sum insured: AND that for the purpose of making such insurances as aforesaid, it shall and may be lawful to and for the said [*broker*] to use the name, and act as the attorney, of the said [*underwriter*], and to sign, seal, and deliver any policy or policies of insurance in the name and as the act and deed of the said [*underwriter*], and to receive and give acquittances and discharges for any premium or premiums which shall be payable for or in respect of any insurance to be made from time to time in the name and on the account of the said [*underwriter*]: AND that he the said [*underwriter*] shall and will yearly and every year, on the day of in every year, and in that proportion for any less time than a year, give and allow to the said [*broker*] a salary of pounds of lawful money of Great Britain [and Ireland], as long and so long and during such time as he shall be employed by the said [*underwriter*] as his broker, under or by virtue of these presents.

TO EMPLOY INSURANCE BROKER.

To execute policies, and give acquittances for premiums;

and to allow broker a salary

SECONDLY, the said [*broker*] doth hereby agree with the said [*underwriter*], that he the said [*broker*] shall not or will not at any time, while employed by the said [*underwriter*] as his broker under or by virtue of these presents, engage the name or responsibility of the said [*underwriter*] for any sum exceeding pounds on any one risque on one and the same ship or vessel, or goods or merchandizes in the same ship or vessel, jointly or separately, or on any risque on which the premium shall exceed pounds per centum for the insurance; or in any insurance other than and except such insurances as shall be transacted at the office or house of business of the said [*broker*], and in the regular and ordinary course of transacting the same business: AND that he the said

Agreement by broker not to engage underwriter's credit beyond a certain sum, and under other conditions.

To render accounts of risques.

TO EMPLOY INSURANCE BROKER.

[*broker*] shall or will from time to time, at the request of the said [*underwriter*], render and give to the said [*underwriter*] an account of all risques in which the said [*underwriter*] shall be then engaged as an insurer, with all such particulars as shall be necessary to enable the said [*underwriter*] to ascertain the nature of the same risques; and also of all money which from time to time shall have been received on account of said [*underwriter*], in respect of the premiums of insurance; and also of all losses which shall have been sustained, or be claimed, under any insurance or insurances in which the name or responsibility of the said [*underwriter*] shall have been engaged.

And of monies received.

Accounts to be settled yearly.

THIRDLY, *it is hereby agreed* by and between the said parties, that yearly and every year, on the day of in every year, during such time as the said [*broker*] shall be employed, and act as the agent or broker of the said [*underwriter*], the accounts of profits and loss on such insurances as aforesaid, as shall have been made in the preceding year, shall be made up and settled; *and* that such account of profits shall comprize the premiums received and not returned; *and* that the account of losses shall include all sums payable or to be paid by the said [*underwriter*] as such insurer, together with such costs, charges, and expenses, incurred in settling or ascertaining the liability of the said [*underwriter*], or the quantum or extent of the loss to which he shall be liable; *and* the balance remaining for profit, if any, shall be divided into two equal parts; *and* that one of the said half parts shall belong to and be retained by the said [*broker*], in addition to his said salary, and as a further compensation for his agency; *and* that the other moiety, or half part of the said profits, shall belong and be payable and paid to the said [*underwriter*], his executors, administrators, or assigns, subject, nevertheless, to the right of the said [*broker*], to retain thereout the said sum, or salary of pounds a year, unless the same shall have been previously paid by the said [*underwriter*]; *and* that the same moiety, or half part of profits, subject to such deduction as aforesaid, shall be paid to the said [*under-*

Account of profits.

Account of losses.

Profits to be equally divided.

writer], his executors, administrators, or assigns, by the said [*broker*], out of any money in his hands; But nothing herein before contained shall make the said [*broker*] liable to pay or contribute all, or any part of any losses, arising from any insurance to be made as aforesaid, other than and except by way of damages for breach or non-performance of all, any, or either of the agreements hereinbefore contained on his part.

TO EMPLOY INSURANCE BROKER.

Broker not to be liable to losses.

And lastly, each of them the said [*underwriter*] and [*broker*], doth hereby for himself, his heirs, executors, and administrators, covenant, declare, and agree to and with the other of them, his executors and administrators, that each of them, the said [*underwriter*] and [*broker*] respectively, and his respective executors and administrators, shall or will, from time to time, observe, perform, fulfil, and keep to and with the other of them, his executors and administrators, the articles, clauses, stipulations, and agreements hereinbefore contained, to be observed, performed, and kept by him or them, on his or on their parts and behalfs, according to the true intent and meaning of these presents. In witness, &c.

Covenant by both parties to perform agreement.

MANUFACTURERS AND FACTOR.

Agreement *between* Manufacturers *and a* Factor.

Parties.

THIS INDENTURE, made the day of , in the year of our Lord 18 ; Between [*factor*], of, &c. of the one part, and [*four copartners, principals*], all of, &c. of the other part. Whereas the said [*factor*] hath

Recital of agreement to act as factor.

agreed with the said [*principals*], to act as their agent or factor, in the vending of , in the city of

Testatum.

London, for the term of years. Now this indenture witnesseth, that in pursuance of the said agreement, and in consideration of the covenants and agreements hereinafter entered into by the said [*principals*], he the said [*factor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*principals*], severally and respectively, and to and with their several and respective executors, administrators, and assigns, in manner following, that is to say; that he

Covenant to act as factor for years.

the said [*factor*] shall and will act as the factor or agent of the said [*principals*], and of the survivors and survivor of them, and of such person or persons as may be copartner or copartners in trade with them, or the survivors or survivor of them, in the vending of , for the term of years from the date hereof, determinable nevertheless as hereinafter mentioned: And that

At the house of principals.

he, the said [*factor*], shall and will conduct and carry on the said agency, at the shop or warehouse of the said [*principals*], in Street, in the city of London, or in such other shop or warehouse in the said city of London, as they, or the survivors or survivor of them, may direct or appoint for that purpose: And that he the

To devote his whole time, and not engage

said [*factor*], shall and will devote and give his whole

time and attention to the said agency, and shall not engage in the business of a seller of , or in any other business whatsoever, either on his own account, or as a factor or agent, and either alone or in copartnership with any person or persons whomsoever: AND that he the said [*factor*] shall and will carefully deposit and preserve, in the shop or warehouse for the time being made use of for the purpose of said agency business, all such goods, wares, and merchandizes, as may be sent or transmitted to him by the said [*principals*], or the survivors or survivor of them, or any person or persons who may be copartner or copartners in trade with them, or the survivors or survivor of them: AND that in managing and conducting the said agency, he the said [*factor*] shall and will use his best endeavours to procure the greatest possible sale of the , and other goods which he shall be employed to sell as such factor as aforesaid, either for ready money, or to persons of responsibility, and worthy to be trusted: AND that, in selling upon credit, he the said [*factor*] shall and will be circumspect and cautious, and will make due enquiries from persons of respectability, whether the persons applying to purchase on credit are persons of responsibility, and worthy to be trusted; *and* upon making every such inquiry, shall and will make a minute or memorandum thereof, in a book to be kept for that purpose, specifying the name of the person applying to purchase on credit, the name or names of the person or persons applied to for the purpose of knowing whether such person might be trusted with safety, and also specifying what was said upon the subject by such person or persons so applied to: AND ALSO that he, the said [*factor*], shall not nor will give credit to any person or persons, for a greater length of time than , without the consent in writing of the said [*principals*], or the survivors or survivor of them; *and* shall not nor will, without such consent, sell to any person on credit, to a greater amount than to the amount or sum of pounds: AND ALSO that he the said [*factor*] shall and will, in conducting the said agency, conform to and govern himself by such orders, instructions, and directions, as he may from time to time receive from the said [*principals*], or the survivors

MANUFACTURERS AND FACTOR.

or be employed in any other business.

To deposit the goods committed to his charge in the shop.

To procure best sale, either for ready money or to persons of good credit.

In selling upon credit, to make enquiries whether the parties applying to purchase on credit, are worthy to be trusted.

To minute result of enquiries.

Not to give longer credit than , or for a greater amount than pounds, without consent of principals.

To act according to directions of principals.

MANUFACTURERS AND FACTOR.

or survivor of them; *and* in all cases, where he shall receive no special orders or directions, that he shall and will act in such manner as he shall judge to be most conducive to the advantage of the said [*principals*], and of the survivors and survivor of them, and of such person or persons as may be copartner or copartners in trade with them, or the survivors or survivor of them: AND ALSO that he the said [*factor*] shall and will, from time to time, account for and transmit to the said [*principals*], or the survivors or survivor of them, all monies, bills, and securities for money, received from the sale of any , or other goods sold by the said [*factor*], as such factor or agent as aforesaid: AND ALSO that he the said [*factor*] shall and will, from time to time, in case he has assets in his hands, accept and duly pay all such bill and bills of exchange as may be drawn upon him by the said [*principals*], or the survivors or survivor of them, and of which he may receive due notice from them, or the survivors or survivor of them: AND ALSO shall and will, from time to time, on the first day of each and every month, send and transmit to the said [*principals*], and to the survivors or survivor of them, a full, clear, and correct statement in writing, of all orders both taken and executed; and of all goods which may have come to his hands; and also of all such goods as he may have sold, to whom, and whether for ready money or on credit; and likewise of all such other matters, transactions, and things, as in any wise concern the said agency business, and which may have taken place during the preceding month: AND ALSO that he the said [*factor*] shall and will keep books of account, in which shall be made plain and correct entries of all goods received from the said [*principals*], or the survivors or survivor of them, or from any person or persons who may be the copartner or copartners in trade with them, or the survivors or survivor of them; and also of all goods sold and delivered by him the said [*factor*], as such factor or agent as aforesaid; and also of all orders received and taken; and of all other matters, transactions, and things, in any wise concerning the said agency business: AND that he the said [*factor*] shall and will, on the day of , and the day of in

In absence of special orders, to act for benefit of principals.

To account for and transmit monies, &c. received, to principals.

To accept principals' bills when he has assets in hand.

To transmit monthly account of affairs to principals.

To keep account books.

To balance account books every half year.

each and every year, unless either of the said days shall happen on a Sunday, and in that case on the day following, accurately cast up and balance the said books of account, in order that the true state of the said agency business may clearly appear therefrom: AND FURTHER that it shall and may be lawful to and for the said [*principals*], or the survivors or survivor of them, or any person or persons who may at any time be the copartner or copartners in trade of them, or the survivors or survivor of them, their respective executors and administrators, or any of them, at all seasonable hours in the day time, to have free access to the said books of account, and to all other books, papers, documents, and writings, in any wise touching or concerning the said agency business; and to take copies of or extracts from the same or any of them; *and* which said books of account, papers, documents and writings, the said [*factor*] shall and will carefully preserve, (damages by fire and other inevitable accidents only excepted); *and* upon the final settlement and winding up of the said agency business, shall and will give and deliver up the same books, documents and writings, undefaced, and unobliterated, to the said [*principals*], or the survivors or survivor of them, his executors or administrators: AND THE SAID [*factor*], for himself, his heirs, executors, and administrators, doth hereby further covenant and agree with the said [*principals*], their respective executors, administrators, and assigns, that he the said [*factor*] shall and will, out of the salary or wages hereinafter agreed to be paid to him, find and provide a clerk who writes a good hand, and understands accounts and book-keeping, for the purpose of constantly assisting him the said [*factor*] in the management of the said agency business: AND ALSO that he the said [*factor*] shall and will out of such wages or salary, find and provide a porter for the purpose of assisting in the said business. AND THE SAID [*principals*], in consideration of the true and just performance of the covenants and agreements hereby entered into by the said [*factor*], for themselves jointly and severally, for their several and respective heirs, executors, and administrators, do hereby covenant and agree with the said [*factor*], his executors, administrators, and assigns, in manner following,

Principals to have access to inspect the accounts, &c.

Account books to be carefully preserved.

Account books to be delivered to principals at end of term.

Covenant by factor to provide a clerk and porter out of his salary.

Covenant by principals, to pay salary by weekly payments.

MANUFACTURERS AND FACTOR.

that is to say; that they the said [*principals*], their respective heirs, executors, and administrators, or some or one of them, shall and will yearly and every year, during so long as the said [*factor*] shall act as their agent or factor as aforesaid, well and truly pay or cause to be paid unto the said [*factor*], the wages or salary of hundred pounds a year, of lawful money of Great Britain [and Ireland]; the said wages or salary to be paid and payable by even weekly payments; the first payment thereof to begin and be made on the day of next ensuing the date of these presents: AND ALSO that in case the said [*factor*], as such factor or agent as aforesaid, shall sell and dispose of such a quantity of goods so that commission on [*particular*] goods at the rate of five pounds for every hundred pounds worth thereof; and on all other goods at the rate of two pounds ten shillings for every hundred pounds worth thereof, would amount to a greater sum than [*salary*] hundred pounds a year, Then, and in such case they the said [*principals*] shall and will, at the end or expiration of each and every half year, pay to the said [*factor*] such further sum as will make the said salary or wages of hundred pounds a year, equal to what commission at the rate aforesaid on the goods so sold would have amounted to; *nevertheless*, it is fully understood that such further sum is not to be paid on any bad debts, but only on the amount of the monies actually received and come to hand. AND THE SAID [*principals*] do further agree that the said [*factor*], during such time as he shall act as such factor or agent as aforesaid, shall and may with his family and servants reside in the dwelling-house with the appurtenances, over the said shop or warehouse, in street aforesaid, free from the payment of rent or taxes for the same: AND ALSO that they the said [*principals*] shall and will pay unto the said [*factor*], once every six months, all such sum and sums of money as he may have paid or laid out, for or on account of books, paper, and stationery, made use of in and about the said agency business; *and also* all such sums as he may have paid or laid down for the postage of letters relating to the said agency business; *and* for the carriage of goods, wares, and merchandizes, sent to him by the said [*principals*], the survivors or

If factor sell such a quantity of goods, that commission at certain rate would amount to a larger sum than salary, then to pay such further sum as will make salary equal to what commission on goods sold would have amounted to.

Not to extend to bad debts.

Agreement to permit factor to reside in rooms over warehouse, rent free.

To pay factor half yearly all sums paid for carriage of goods, &c.

survivor of them, or by any person or persons who may be copartner or copartners in trade with them, or the survivors or survivor of them. AND THE SAID [*principals*] do further agree with the said [*factor*], that they, or the survivors or survivor of them, shall not nor will employ any other person as a factor or agent in the vending of , within the city of London, during such time as the said [*factor*] shall act as such factor or agent as aforesaid. PROVIDED NEVERTHELESS, *and it is hereby agreed* between the parties hereto, that the said [*factor*] shall not be answerable for any loss or damage which may happen to any goods or merchandize sent to him by any coach, waggon, barge, or otherwise, before the same shall come to his hands or custody; nor for any loss or damage which may happen to any goods or merchandize which have actually come to his hands or custody, and which may be sent by the said [*factor*], to any customer by any porter, coach, waggon, barge, ship, or otherwise howsoever; or for any other loss or damage which may happen to any of the goods and merchandizes committed to his charge or care, *unless* such loss or damage happens through his wilful neglect or default: or unless where any loss is stated to happen to any of such goods in the carriage thereof by any coach, waggon, barge, or ship, the said [*factor*] shall have neglected to book at the office of such coach, waggon, barge, or ship, the delivery of such goods or merchandizes: AND that the said [*factor*] shall not be answerable for any loss or damage which may happen to any of such goods or merchandizes. (*a*) PROVIDED NEVERTHELESS, *and it is hereby* agreed by and between the parties hereto, that in case the said [*factor*] shall at any time before the expiration of the said term of years, be desirous of giving up the said agency business, it shall and may be lawful for him so to do, upon giving six calendar months previous notice in writing of such his intention to the said [*principals*], or the survivors or survivor of them, or by leaving such notice at their or his usual places or place of abode. AND *it is also agreed*, that if the said [*principals*], or the survivors or survivor of them, shall at any time before the expiration of the said term of years, be minded and desirous to dis-

MANUFACTURERS AND FACTOR.

Not to employ any other person as factor.

Factor not to be answerable for involuntary losses.

Power for factor to determine agreement, on giving months' notice.

Power for principals to discharge factor on giving months' notice.

(*a*) [See *ante*, 2.]

MANUFACTURERS AND FACTOR.

charge the said [*factor*] from being such factor or agent as aforesaid, it may be lawful for them or him so to do upon giving six calendar months previous notice in writing of such intention, or upon leaving such notice at the shop or warehouse for the time being, made use of by the said [*factor*] in the said agency business, any thing herein contained to the contrary notwithstanding. And *it is hereby covenanted and agreed*, by and between the parties hereto, that if any dispute or difference shall at any time or times arise or happen between the said [*factor*] on the one part, and the said [*principals*], or any person or persons who may be copartner or copartners with them, or the survivors or survivor of them, their respective executors or administrators, or any of them, on the other part, for or on account of any matter or thing herein contained, which shall not within one calendar month after the same shall arise be fully decided between the parties in difference themselves, Then and so often, and in every such case, the matter of every such difference or dispute shall from time to time, upon the request of any of the parties in difference or dispute, be reduced into writing, and be referred to the hearing of three indifferent persons, to be chosen one by the said [*factor*], his executors or administrators, another by the person or persons in difference or dispute with the said [*factor*], his executors or administrators, and a third by the two persons so first chosen: And such arbitrators to be accordingly chosen within the space of two calendar months next after such request as aforesaid: And the award, order, and determination of the said three persons so to be chosen as aforesaid, or of any two of them, in the matters referred to them, shall be binding and conclusive upon the parties in difference, their respective executors and administrators; and shall be performed, observed, and kept by them accordingly: *provided* such award, order, or determination, be made in writing, under the hands and seals of the persons making the same, and ready to be shown to the parties concerned within the space of twenty-eight days next after the request of any of such parties for that purpose: And for the better enforcing the performance and observance of every such

Arbitration clause.

Rule of court.

MANUFACTURERS AND FACTOR.

award, the same shall from time to time be made a rule of his Majesty's Court of King's Bench, according to the statute in that case made and provided. AND for the purpose of better enabling the said [*factor*] to receive and get in all debts and sums of money for or on account of any goods, wares, and merchandizes, which may be sold by him as such factor or agent as aforesaid, they the said [*principals*] have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint the said [*factor*] their true and lawful attorney, for them, in their names, and for their use, to ask, sue for, recover and receive, all such sum and sums of money as shall or may be due or owing from any person or persons, for or on account of any goods or merchandizes sold by him, as their agent or factor as aforesaid, and to give receipts and sufficient discharges for the same; *they* the said [*principals*] hereby ratifying and confirming all and whatsoever he the said [*factor*] shall lawfully do or cause to be done, in and about the premises; and any attorney or attornies under him the said [*factor*] to substitute and appoint, and at pleasure to revoke. IN WITNESS, &c. (*a*).

Power of attorney to factor to receive debts.

(*a*) [A factor employed to sell, has no authority to barter. *Guerreiro* v. *Peile*, 3 B. & A. 616. The laws respecting principal and factor are altered and amended by 4 Geo. IV, c. 83, and 6 Geo. IV, c. 93.—*Ed.*]

ASSOCIATION FOR PROSECUTING FELONS.

AGREEMENT *for regulating an* ASSOCIATION *for* PROSECUTING FELONS, &c.

THIS INDENTURE, made the day of , in the year of the reign, &c. George the *Fourth*, &c. and in the year of our Lord 18 ; BETWEEN the several persons whose names are or shall be subscribed and seals affixed to these presents, of the one part, and [*treasurer and solicitor*], of, &c. of the other part. WHEREAS the several persons parties hereto, of the first part, are inhabitants of, or owners or occupiers of lands within the town of , situate in the county of . AND WHEREAS the said several persons parties hereto, of the first part, have agreed to form themselves into an association for the prosecution of felons and persons guilty of theft, and other crimes and offences within (*intended limits*) ; *and* they have agreed to give the several rewards hereinafter mentioned, for the several offences hereinafter expressed, that is to say; *The* sum of (*five*) guineas to any person or persons who shall, during the term of (*seven*) years from the date hereof, discover and give evidence of any robbery on the high way, within the said ; or of breaking or entering any dwelling-house, or any barn, stable, or other building within , and stealing, or with an intent to steal, any thing thereout ; or of stealing any sheep, horse, cattle, or pig, within the same limits ; or of setting fire to any dwelling-house, barn, stable, or other building ; or to any stack or rick of grain, hay, straw, or fodder, within the same limits ; or of maliciously killing or maiming any cattle belonging to any or either of the persons parties hereto of the first part, and being within the limits aforesaid : *And also* the sum of (*three*) guineas to any person or persons who shall disco-

Parties.

Recital of situation of parties.

Agreement to form association.

Scale of rewards.

ver and give evidence against any person or persons, who shall during the time aforesaid, and within the limits aforesaid, steal any grain, hay, fowls, household goods, implements or utensils of trade or husbandry, belonging to all or any of the parties hereto of the first part; or be guilty of milking any cow, or of robbing any court yard, garden, orchard, or field; or of cutting down any timber tree or trees, grove, or plantation, of or belonging to all, any, or either of the persons parties hereto of the first part: *And also* the sum of (*ten shillings and sixpence*) to any person who shall discover and give evidence against any person, who within the limits aforesaid shall steal any peas, turnips, or potatoes, of or belonging to all, any, or either of the persons parties hereto of the first part; or shall be guilty of breaking any hedges, gates, stiles, posts, poles, pales, or rails; or of stealing any hooks or eyes, or any timber, boards, quarters, or offal wood, which shall be the property of any or either of the persons parties hereto of the first part, and within the limits aforesaid; *Such* rewards to be paid on the conviction of the offenders respectively, in addition to the rewards allowed by act of parliament: *And* to contribute towards the same rewards, and the expense of prosecuting such felons, thieves, and offenders, in equal proportion; *And* to observe the several articles, rules, orders, and regulations hereinafter contained, that is to say;

ASSOCIATION FOR PROSECUTING FELONS.

Rewards to be paid on conviction.

To contribute towards expenses in equal proportions.

First, the said association shall continue (*seven*) years, to commence and be computed from the day of , and fully to be complete and ended.

Association to continue for seven years.

Secondly, the affairs of the association shall be under the conduct, regulation, and management, of a committee of persons, or any of them, to be chosen from the members for the time being of the same association: *Such* committee shall be elected by ballot at a meeting of the subscribers, to be held at , on the day of , in every year: The committee for the time being, or the major part of them, shall have power to supply any vacancy in their number by death or removal, or refusal to act; The adjudication of

Committee to manage affairs of association.

To be elected by ballot.

To supply vacancies.

Adjudge rewards.

ASSOCIATION FOR PROSECUTING FELONS.

all rewards, and the conduct and direction of all prosecutions, and the settlement of the accounts relating thereto; AND the right of making calls on the subscribers for the time being of money to be paid to answer such rewards, and to defray the expenses of such prosecutions, shall be in the discretion and wholly under the controul of the committee for the time being, or the major part of them:

Direct prosecutions.

Make calls for money.

Calls to be answered in one month.

EACH and every call which shall be made by the said committee, or the major part of them, shall be answered and paid by the members respectively, within (*one*) calendar month after notice to them respectively of the same call: AND each subscriber shall contribute and pay an equal proportion, according to the number of subscribers, towards all money which shall be called for to answer and pay such rewards, or to defray the expenses of prosecutions and all other incidental expenses: THE money which shall be called for from time to time shall be paid to the treasurer for the time being of the said association; *and* shall be applied and paid by him in such manner, and to such persons as the committee for the time being, or the major part of them, shall direct: ALL prosecutions which shall be conducted on account, and at the expense of the said association, shall be solicited and carried on by the solicitor for the time being of the said association: AND every subscriber shall be entitled to have every prosecution for any offence which during the said (*seven*) years shall be committed on his person or property within the limits aforesaid, and which he or she shall be duly bound to prosecute, carried on by the solicitor for the time being of the said association, at the expense of the same association, under the direction and controul of the committee for the time being of the said association, or the major part of them: AND the committee for the time being, or the major part of them, shall have full power to undertake any other prosecutions for offences committed within the limits aforesaid, at the expense of the said association, in those instances in which the poverty or situation of the persons on whose persons or property the offences shall be committed, shall render it expedient that the offender or offenders shall be punished at the expense of the said association: EACH and every subscriber shall cease to be a member of the

Subscribers to contribute equally.

Money to be paid to treasurer.

To be applied as committee direct.

Solicitor to conduct all prosecutions.

Subscribers to be entitled to have prosecutions for offences on their persons or property, carried on by association.

Power to committee to carry on prosecutions for poor persons.

Subscribers not to be members when they

said association, from the time he or she shall cease to be an inhabitant, and also not being an inhabitant, to be an owner or occupier of lands within the limits aforesaid: AND each subscriber shall be discharged from his or her engagement herein contained on his or her death, so as not to impose any obligation on his or her heirs, executors, or administrators, for or in respect of any offences to be committed subsequent to his or her death: A treasurer and solicitor to the said association shall be chosen once in every year by ballot, by the major part of the members who shall be present at a meeting to be held at on the day of : THE same person may be chosen a treasurer and solicitor, or a different person may be chosen to each of these offices: No treasurer or solicitor shall be eligible on any committee: IN case of a vacancy in the office of treasurer or solicitor, either by death or any other cause, within any year, such vacancy may be supplied for the remaining part of the year by the committee for the time being, or the major part of them: THE said [*treasurer and solicitor*] shall be treasurer and solicitor for the said association for the first year: THE treasurer shall produce his account from time to time to the committee, or the major part of them: AND at the end of every year, or on any other election of a new treasurer, the preceding treasurer, or his heirs, executors, or administrators, shall pay to the succeeding treasurer the balance of the money in hand, as the same balance shall be settled and ascertained by the said committee for the time being, or the major part of them; and the account so stated shall be paid, and such payment be a good discharge: No account settled, or allowed by the committee for the time being, or the major part of them, shall be afterwards opened or questioned: AND all calls made by such committee, or the major part of them, shall be duly answered, without any right to question the expediency or necessity of the same. AND *each and every* of the several persons, parties hereto of the first part, *doth* hereby for himself and herself respectively, and his and her respective heirs, executors, and administrators, and as to and concerning only his and her own respective acts, deeds, and defaults, covenant,

ASSOCIATION FOR PROSECUTING FELONS.

cease to be inhabitants, owners, or occupiers.

Subscribers to be discharged from liability from their death.

Treasurer and solicitor to be chosen by ballot yearly.

Same person, or different persons, may be chosen.

No treasurer or solicitor to be on committee.

Vacancy of treasurer or solicitor in interim of year to be supplied for remainder by committee.

First treasurer and solicitor.

Treasurer to produce accounts to committee.

Preceding treasurer to pay balance to succeeding treasurer.

No account settled by committee to be questioned.

Calls for money to be answered without enquiry.

Covenant by subscribers,

with treasurer.

ASSOCIATION FOR PROSECUTING FELONS.

declare, and agree to and with the said [*treasurer and solicitor*], his executors and administrators, *In trust* for the persons who for the time being shall be the members of the said association, That they the said several persons, parties hereto of the first part, and their respective executors and administrators, shall and will from time to time, and at all times during the said term of (*seven*) years, if they should so long continue members of the said association, pursuant to the rules and regulations hereinbefore contained, observe, perform, fulfil, and keep all and singular the articles, stipulations, and agreements hereinbefore contained, to be observed, performed, fulfilled, and kept by them respectively; And make all such payments as ought to be or shall be required to be made, pursuant to such calls as aforesaid of the said committee for the time being, or the major part of them; And make such payments respectively to the treasurer for the time being of the same association, subject to the order, controul, and disposition of the committee for the time being of the said association, or the major part of them; And that they respectively shall and will in all other respects conform to observe, perform, fulfil, and keep, all and singular the rules and regulations hereinbefore contained. In witness, &c.

In trust for subscribers, to observe regulations.

Make payments

to treasurer, subject to disposition of committee.

And observe all other rules.

TO BUILD A HOUSE, &c.

AGREEMENT *to* BUILD *a House, &c., the Materials to be provided by the Builder.*

ARTICLES OF AGREEMENT made and entered into the day of , 18 ; BETWEEN [*the builder*], of, &c. of the one part, and [*the proprietor*], of, &c. of the other part. Parties.

FIRST, the said [*builder*], doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*proprietor*], his executors, administrators, and assigns, that he the said [*builder*], his executors or administrators, shall or will, for the considerations hereinafter mentioned, within the space or time of (*six calendar months*) from the date of these presents, erect, build, and completely cover in and finish upon the premises of the said [*proprietor*], at aforesaid, a dwelling-house and buildings according to the plan and elevation set forth in the schedule hereunder written: AND ALSO, do, perform, and execute, or cause and procure to be done, performed, and executed, all and singular the works also mentioned in the schedule hereunder written, according to the plan and elevation therein mentioned or contained, the same to be done within the time aforesaid, and in a good, workmanlike, and substantial manner (*a*): Covenant to erect buildings according to plan.

(*a*) "to the satisfaction of [*surveyor* or *architect*], of, &c. or any other surveyor whom the said [*builder*] and [*proprietor*] shall for that purpose by some writing under their hands appoint; to be testified by a writing or certificate under the hand of the said [*surveyor* or *architect*], or such other surveyor as aforesaid:" To the satisfaction of a mutual surveyor or architect.

TO BUILD A HOUSE, &c.

AND ALSO shall and will find and provide such good, proper, and sufficient materials, of all kinds whatsoever, as (*b*) shall be proper and sufficient for erecting the said dwelling-house and buildings, and completely finishing the said works. (AND IT IS FURTHER AGREED by and between the said parties, that if the said [*builder*], his executors or administrators, should in any manner neglect, or be guilty of any delay whatsoever, in building and completely finishing the said dwelling-house, buildings, and works as aforesaid (*c*); *and* the said [*proprietor*] should give or leave notice in writing, of such neglect or delay at the place of abode of him the said [*builder*], his executors or administrators, and the said [*builder*], his executors or administrators, should not (*d*) proceed to complete the said buildings and works, within the space of (*seven*) days after such notice given or left as aforesaid, *Then*, and in any such case, it shall and may be lawful for the said [*proprietor*], his executors or administrators, to purchase proper and sufficient materials; *and also* to employ a sufficient number of workmen, to finish and complete the said dwelling-house, buildings, and works; *and also* that the said [*proprietor*], his executors, administrators, and assigns, shall and may deduct and retain to himself and themselves the costs of such materials, and all such sum and sums of money as he or they shall pay to such workmen, for the completion of such dwelling-house, buildings, and works, out of the money which shall be due to the said [*builder*], his executors or administrators, under this agreement; *and also* that the said [*builder*], his executors or administrators, shall not nor will in any manner do or cause, or procure to be done, any act, matter, or

On builder's default, proprietor to finish the works, and to deduct the expenses.

Old materials to be used.

(*b*) "together with and in addition to the materials now lying on the said premises,"

Certificate of surveyor or architect.

(*c*) "and the said [*surveyor* or *architect*], or such other surveyor or architect as aforesaid, shall certify the same by writing under his hand;"

Direction of surveyor or architect.

(*d*) "according to the direction of the said [*surveyor* or *architect*], or such other surveyor as aforesaid,"

TO BUILD A HOUSE, &c.

thing whatsoever, to prevent, hinder, or molest the said [*proprietor*], his executors, administrators, or assigns, or any person or persons employed by him or them, from completing and finishing the said dwelling-house, buildings, and works, in manner aforesaid; or in using the materials which shall be on the said premises, and provided by either of the said parties for the doing thereof.) AND THE SAID [*proprietor*] doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*builder*], his executors and administrators, that he the said [*proprietor*], his executors or administrators, shall and will well and truly pay (*e*), or cause to be paid unto the said [*builder*], his executors, administrators, or assigns, the sum of pounds, of lawful money current in Great Britain [and Ireland] (*f*), within days, (*or* months) next after the said dwelling-house, buildings, and premises,

Proprietor to pay builder at one payment.

(*e*) If the owner of an estate of inheritance contract for erecting buildings on the lands, and die before they are finished, or the money paid, his heir may compel the finishing; and in both cases the executors or administrators of the ancestor must pay the builder out of his personal estate. *Holt* v. *Holt*, 2 Vern. 322. 3 P. Wms. 223. Cas. Temp. Talb. 83. n.

(*f*) "in manner following, that is to say; the sum of (*seventy-five*) pounds *per cent.* on the amount of the (materials used in the said) buildings and works as they shall proceed, to be ascertained by the surveyor (*or* architect) for the time being, and his certificate under his hand to be conclusive between the said parties. (AND ALSO that the said [*proprietor*], his executors or administrators, shall and will every week during the progress of the said buildings and works, pay and supply the said [*builder*], his executors and administrators, with such sums of money as shall be sufficient for paying and discharging the wages and labour of the workmen and labourers who shall from time to time be employed in or about the said buildings and works; the amount whereof shall be ascertained by the surveyor (*or* architect) for the time being, by a certificate under his hand, and the remainder of the said sum of pounds, within, &c. (*as above.*)

Or by instalments.

Proprietor to pay workmens' wages.

TO BUILD A HOUSE, &c.

shall be completely built, done, and finished (*g*). AND IT IS HEREBY DECLARED AND AGREED by and between the said parties hereto, that in case the said [*proprietor*], his executors, administrators, or assigns, should direct any more work to be done (*h*) in or about the said dwelling-house, buildings, and works, than is contained in the schedule hereunder written, *Then*, and in such case, the said [*proprietor*], his executors or administrators, shall pay or cause to be paid unto the said [*builder*], his executors or administrators, so much money as such extra work, and the materials used therein, shall cost or amount unto, any thing hereinbefore contained to the contrary notwithstanding; (*and* that in case it should be thought proper by the said [*proprietor*], his executors, administrators, or assigns, to diminish or omit any part of the work in the said schedule hereunder written, *Then*, and in such case, the said [*builder*], his executors or administrators, shall deduct and allow out of the said sum of pounds, so much money as the work so to be diminished or omitted shall amount unto, upon a reasonable valuation, any thing hereinbefore contained to the contrary notwithstanding (*i*)). AND IT IS HEREBY COVENANTED AND AGREED by and between the said parties hereto, that if any dispute or difference should happen or be made between them, their or either of their executors, administrators, or assigns (*k*), touching or

Additional work to be paid for.

Omitted work to be deducted.

Disputes to be referred to arbitration.

To the satisfaction of surveyor or architect.

(*g*) "to the satisfaction of the said [*surveyor* or *architect*], or such other surveyor as aforesaid, the same to be testified in writing under his hand."

Additional work.

(*h*) Where a builder contracts for a particular sum, and additions are made to the original plan, the contract remains binding as far as it can be traced, and the excess only is recoverable on a *quantum meruit*. *Pepper* v. *Burland*, Peake. N. P. C. 103. S. P. *Robson* v. *Godfrey* & *Thomas*, Holt. N. P. C. 236.

Allowances and deductions to be settled by surveyor or architect.

(*i*) "AND all allowances or deductions for such extra or omitted works respectively, shall be ascertained and settled by the said [*surveyor* or *architect*], or such other surveyor (*or* architect) to be appointed as aforesaid."

Disputes with surveyor or architect.

(*k*) "or between either of them, and the said [*surveyor*

TO BUILD A HOUSE, &c.

concerning the said dwelling-house, buildings, and works, hereby covenanted to be made and done as aforesaid, or touching or concerning any other matter or thing whatsoever, relating to the work hereby contracted to be done, or such additional or extra work as aforesaid, *Then* such dispute or difference shall be left to the determination and award of (*three*) indifferent persons, one to be named by the said [*builder*], his executors or administrators, another by the said [*proprietor*], his executors, administrators, or assigns, and the third to be chosen by the said two persons so to be named by each of them the said parties, or his executors, administrators, or assigns, immediately, or within (*ten*) days after notice of such dispute or difference. AND each of them the said parties doth hereby, for himself and his heirs, executors, and administrators, covenant, promise, and agree, to and with the other of them, his executors and administrators, that they the said parties respectively and their respective executors and administrators, shall and will severally stand to, abide, perform, and keep the award and determination of the said (*three*) persons so to be chosen, or of any two of them, touching the said several matters and things so to be referred to them as aforesaid, So as the same determination be made in writing under the hands and seals of the said arbitrators, or some two of them within one calendar month next after such reference. AND IT IS FURTHER AGREED by and between the said parties, that the submission hereby made shall, at the option and expense of either of the said parties requiring the same, be made a rule of his Majesty's Court of King's Bench at Westminster: AND that the costs and charges attending any such reference or arbitration as aforesaid, shall be in the discretion of the said arbitrators, or any two of them, and shall be paid and satisfied pursuant to their award. IN WITNESS, &c.

Agreement to abide by award.

Submission to be a rule of court.

Costs to be awarded.

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or *architect*], or such other surveyor (or *architect*) to be appointed as aforesaid,"

BUILDING A BRIDGE.

AGREEMENT *by Commissioners under an Act of Parliament, with a Mason and a Carpenter, for* BUILDING *a* BRIDGE.

ARTICLES OF AGREEMENT indented, made, and entered into, the day of , in the year of George 4th, &c. and in the year of our Lord 18 ; BETWEEN A. B. C. and D. (*describe the Commissioners individually*), being four of the commissioners and trustees nominated and appointed for putting in execution an act made and passed, &c. (*set forth the year of the reign, and the title of the act*), of the one part, and [*mason*], of, &c. mason, and [*carpenter*], of, &c. carpenter, of the other part.

Parties.

Recital of meeting of commissioners.

WHEREAS at a public meeting of the trustees for putting the said act into execution, duly held pursuant to the directions of the act, the said [*commissioners*], by virtue of the powers and authorities in them vested by the said act, determined and resolved, that the intended bridge should be forthwith erected; *And* that they had accepted and agreed to the proposals then and there to them made by said [*mason* and *carpenter*] for building the same, according to the plans, elevations, and sections, designed and prepared by [*architect*], of, &c. architect; *And* that day signed by the same trustees, and the said [*mason* and *carpenter*]; at or for the sum of hundred pounds, to be paid as after mentioned; *subject* nevertheless to such alterations as the said [*commissioners*], or any or more of them, should think proper to make or cause to be made in the works of the intended bridge: AND the said [*commissioners*], by virtue of the powers and authorities in

Of agreement to mason's and carpenter's proposals for building bridge.

Subject to variations by commissioners.

Appointment of surveyor of works.

BUILDING A BRIDGE.

them vested by the said act, *have* appointed, and by these presents *do* appoint [*surveyor*], of, &c. architect, to be the surveyor of the works during their pleasure. Now THESE PRESENTS WITNESS, that for carrying the said proposals and agreement into execution, the said [*commissioners*] on the one part, and the said [*mason* and *carpenter*] on the other part, mutually declare, contract, and agree, as follows; AND FIRST, in consideration of hundred pounds, part of the hundred pounds to the said [*mason* and *carpenter*] paid by the said [*commissioners,*] at or before the sealing and delivery of these presents, the receipt whereof they the said [*mason* and *carpenter*] do, and each of them doth hereby admit and acknowledge; *And also,* in consideration of the covenants and agreements hereinafter entered into and contained on the part of the said [*commissioners*], to be by them, the said [*commissioners*], their executors and administrators, observed and kept, *They* the said [*mason* and *carpenter*], for themselves jointly and severally (*a*), and for their respective

Agreement by mason and carpenter, in consideration of pounds,

to build a bridge.

(*a*) Though a covenant be *joint and several* in the terms of it, yet if the interest and cause of action be *joint*, the action must be brought by all the covenantees. And, on the other hand, if the interest and cause of action be *several*, the action may be brought by one only. *Eccleston* v. *Clipsham*, 1 Saund. 153. So though a man covenant with two or more *jointly*, yet if the interest and cause of action of the covenantees be *several* and not joint, the covenant shall be taken to be several, and each of the covenantees may bring an action for his particular damage, notwithstanding the words of the covenant are joint. *Windham's* case, 5 Co. 8. a. *Wotton* v. *Cooke*, Dyer, 337. b. *Wilkinson* v. *Lloyd*, 2 Mod. 82. *Tippet* v. *Hawkey*, 3 Mod. 263. Bull. Ni. Pri. 157. [*James* v. *Emery*, 8 Taunt. 245. *Withers* v. *Birchman*, 5 Dow. and Ry. 106. 3 Barn. and Cres. 254. S. C.]

Joint and several covenants,

But where two persons covenant *jointly* and *severally* with another, the covenantee may bring an action against one of the covenantors only, though their interest in the subject-matter of the covenant be joint; as where A. lets lands to B. and C. and they covenant jointly and severally with the lessor to pay the rent, or the like, he may bring an action against either of the covenantors; because they are sureties for each other for the due performance of the covenants, and it is as competent for each of them to covenant for the other, as it is for a stranger to covenant for both, which is a usual thing. *Ennys* v. *Donnithorne*, 2 Burr. 1190. *Lilly* v. *Hedges*,

BUILDING A BRIDGE.

heirs, executors, and administrators, do and each of them doth covenant, promise, contract and agree, to and with the said [*commissioners*], their executors and administrators, that they [*mason* and *carpenter*], their executors or administrators, will, at their own proper costs and charges, forthwith begin, and in an expeditious workmanlike manner, build, erect and finish, the said intended bridge, agreeably to the said plans and sections: AND ALSO find, furnish, and provide, all the materials incident or necessary

Provide materials

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1 Str. 553. 8 Mod. 166. S. C. 2 Bac. Abr. 68. Gwill. ed. And even if the covenant were joint, and an action brought against *one* of the covenantors, he could only take advantage of it by a plea in abatement. For the distinction which runs through all the cases is between actions brought *by* one of the several covenantees, obligees, or *by* one of several with whom any contract whether in writing or parol is made, and actions brought *against* one of several joint covenantors, obligors, or contractors. In the former case the action must be brought by all the parties. For where there are several covenantees or obligees, and one of them only brings an action, without averring in the declaration that the others are dead, the defendant may either take advantage of it at the trial as a variance, upon the plea of *non est factum*, or pray oyer of the deed, and demur generally. So where an action is brought by one of several with whom any contract has been made, the defendant may take advantage of it upon evidence at the trial, upon the plea of *non assumpsit*; or if it appears upon the face of the declaration, that the contract was made with others as well as the plaintiff, it will be error. *Slingsby's* case, 5 Co. 18 b. *Eccleston* v. *Clipsham*, 1 Saund. 153. *Leglise* v. *Champante*, 2 Str. 820. *Vernon* v. *Jefferys*, 2 Str. 1146. *Cabell* v. *Vaughan*, 1 Saund. 291. b. 1 Vent. 34. S. C. *Saunders* v. *Johnson*, Skin. 401. Com. Dig. *Pleader*. (2 V. 2.) Bull. Nisi Prius, 158. *Osborn* v. *Crosbern*, 1 Sid. 238. *Holdwich* v. *Chafe*, All. 41. in which last case a distinction seems to be made between the plea of *non est factum*, and praying oyer and demurring: but this distinction does not seem to be warranted by any of the modern cases. But where an action is brought *against* one of several joint conservators or obligors, the defendant can only take advantage of it by a plea in abatement. And though it should appear upon the record that there are others who ought to be joined as defendants, yet that will not be error. *Whelpdale's* case, 5 Co. 119. *Gilbert* v. *Bath*, 1 Str. 503. So in contracts. *Rice* v. *Shute*, 5 Burr. 2611. *Abbot* v. *Smith*. 2 Black. Rep. 947. Wms. n. 1 Saund. 153. [*Petrie* v. *Bury*, 5 Dow. and Ry. 152. 3 B. and C. 353. S. C.]

BUILDING A BRIDGE.

to building the same; *All* such materials to be the best of their several kinds, and of the respective dimensions, nature and qualities, herein-after expressed; *and* to be approved by the surveyor of the works for the time being; (*except* only such work and materials as are herein-after agreed by the said [*commissioners*], to be provided, supplied, and executed, at their own proper expense). And the said [*mason* and *carpenter*], for themselves jointly and severally, and for their respective heirs, executors, and administrators, do and each of them doth more particularly covenant, promise, contract and agree, to and with the said [*commissioners*], their executors and administrators, in manner following, that is to say; That they the said [*mason* and *carpenter*], their executors and administrators, shall and will, in order to lay the bottoms or foundations of the piers and two abutments of the said intended bridge, cause a batterdeaux to be formed ashore, the sides whereof are to be of a sufficient strength and thickness, so as with proper shorings across the inside thereof, to resist the pressure of the water; and which sides are to be so joined, constructed and caulked, as to be water tight; the size and shape thereof to correspond with the figure of the lower part of the piers, and to be high enough to exclude high water when placed in the deepest situation: And shall and will cause the batterdeaux to be carried to the intended situation of the pier to be first built, and there sunk and loaded with the materials for building the same: And after the sides of the said batterdeaux are properly placed for the exact situation of the said first pier, a row of dovetailed pier piles shall be driven into the bottom of the river, to such depth as the surveyor for the time being of the said works shall direct; the points thereof, when so driven in, to be at least four feet deeper than the foundation of such pier; and the heads of such piles to be one foot at least above low water mark; and the joints of the said piling to be so executed as to be water tight; the said row of dovetailed piling to be all round the inside of the sides of the batterdeaux; and where the outside of the piling joins the inside of the batterdeaux, the said space to be strongly secured by bolting the said sides and piling together, and by caulking the same, so as to be water-

of the best qualities.

To be approved by surveyor.

To make a batterdeaux on shore.

And carry same to situation of first pier.

And erect dovetailed fir piles in a certain manner.

BUILDING A BRIDGE.

tight: THE water, sand, and mud, contained in the batterdeaux, to be removed and thrown out, and the said space to be kept entirely free and clear therefrom, until the mason work of the said pier is carried up to low water mark: AND the said excavation of the sand and mud, and the throwing and keeping out the water, shall be continued to such depth, as that the first course of mason work of the same pier may be at the depth hereinafter mentioned: AND ALSO shall and will cause the foundation for the said pier to be exactly levelled; and the heads of the said piling cut off level with the same; and shall cause a sufficient quantity of fir scantlings to be laid across the said foundation, so as to lie close one to another, and cover the whole space thereof; and shall also lay another row of scantlings across the first row, and from end to end of the said pier, so as to cover the said space in the same manner between the dovetailed piling: THE said scantlings of fir not to be less than five inches thick, ten feet long, and of sound timber, without the least sap or worm in the same: AND ALSO shall and will cause the sides of the said batterdeaux to be unfixed and detached from the heads of the dovetailed piling, after the stone work of the said pier is carried up to low watermark, and shall and will cause the said sides to be weighed up and carried from and over the said pier, to the situation of another pier: AND shall and will cause each thing herein above-mentioned for laying the foundation of the said first pier to be carefully and punctually observed and executed, in and for the making a foundation for and to each and all of the several other piers, and the abutments of the said intended bridge: AND after the said piers are all finished, shall and will cut off the dovetail piling at least three feet below low-water mark: and shall and will cause the said scantlings of fir in two rows, or the frame for the half pier or abutment on the side of the river, and for each of the two piers next to that side, to be so far sunk into the bed of the river, as that the first course of stonework set thereon shall be entirely below the surface of the clay; and the said frames for each of the other two piers, and the half pier or abutment on the side of the river, to be so far sunk as that the first course of stonework set thereon shall stand on a level with the surface of

Water, sand, and mud, to be removed from batterdeaux.

Foundation of pier to be levelled.

Piling to be levelled.

Fir scantling to be laid across foundation, &c.

Dimensions of scantlings.

When stone work of first pier finished, to remove batterdeaux to situation of another pier.

Foundation of piers to be carefully laid.

When piers are finished, to cut off dovetailed piling.

Fir scantlings to be sunk a certain depth.

BUILDING A BRIDGE.

the clay: AND that the piles which shall be driven into the bed of the river, and otherwise used for securing the frames of the piers and abutments of the said intended bridge, shall be of such lengths and dimensions, and be driven to such depths, as the surveyor for the time being of the said works shall direct, with or by a hammer, the weight of which, without the follower, shall be at least eleven hundred weight; and its fall from the top of the sliders to the bottom, twenty feet at the least: AND that each of the said piles shall have an iron shoe, of the weight of eight pounds at the least, fixed to one end thereof, in a workmanlike manner, and of such form as shall be best fitted for piercing the bed of the said river: AND ALSO shall and will find and provide so many guard-piles, to measure one foot square, and of such lengths as the surveyor of the said works for the time being shall direct; and shall and will cause them, and each and every of them, to be driven into the bed of the said river, to such depths and in such situations, as the surveyor of the said works for the time being shall direct: AND shall and will find such and so many floating booms, to measure one foot square, and of such lengths as the surveyor of the said works for the time being shall direct; and shall and will fix each end thereof to some of the said guard-piles, in such manner as to rise and fall with the tides, and to be of sufficient strength to keep off all barges, boats, and ice, from breaking through the same, and damaging any of the works of the said intended bridge: ALL such guard-piles, and floating booms, to be by the said [*mason* and *carpenter*], their executors or administrators, made, found, and provided, at their, some, or one of their own costs, charges, and expenses; and also brought to the place or situation where the same shall be made use of for the purposes above mentioned, at their or some of their own expense; *But* to be there driven and fixed respectively, and afterwards from time to time removed, conveyed, driven, and fixed, at the expense of the said [*commissioners*]; AND after having served all the purposes to which the same shall by the surveyor for the time being of the said works be directed to be applied, the said guard piles and floating booms shall be the property of the said [*mason* and *carpenter*],

Piles to be of such length and dimensions, and driven as surveyor shall direct, with a hammer of a certain weight.

Piles to have iron shoe.

To provide guard piles, and drive them as surveyor shall direct.

To provide floating booms, as surveyor shall direct, to rise and fall with tides.

Guard piles a floating boon to be provide by mason and carpenter;

but to be drive and fixed by commissioners

And to belong to mason and carpenter.

BUILDING A BRIDGE.

their executors and administrators. PROVIDED NEVERTHELESS, *and it is declared and agreed* between the parties, that if the surveyor of the works for the time being should, when and so soon as the foundations of the piers are excavated, from the quality of the clay or the nature of the foundation, judge it necessary or think it prudent, for the sake of better securing and making good the said foundations, to drive piles into the bed of the river, in the intended situation of all or any of the piers, *Then*, and in such case, the said [*mason* and *carpenter*], their executors and administrators, shall and will cause such and so many piles to be there driven, to such depths as the surveyor for the time being of the said works shall direct; such piles to be found, provided, and delivered for that purpose, by and at the expense of the said [*commissioners*]: AND shall and will cause each of the said piles which shall be so driven, to be cut or sawed off as near to the surface of the ground in the foundations, as the said surveyor shall direct, and in such manner as to be exactly on a level one with another; THE said [*commissioners*] making the said [*mason* and *carpenter*], their executors and administrators, a reasonable satisfaction or recompence for driving and sawing the same; such satisfaction or recompence to be ascertained by the surveyor of the said works for the time being. AND THE SAID [*mason* and *carpenter*], for themselves jointly and severally, and for their several and respective heirs, executors, and administrators, do, and each of them doth further covenant, promise, contract, and agree to and with the said [*commissioners*] in manner following, that is to say; THAT all and every part of the said four piers, and each and every of them, and of the two half-piers and abutments of the said intended bridge (*except* such parts thereof as the surveyor for the time being shall be of opinion may be filled up with rubble work, without in any wise diminishing or taking from the necessary and required strength of such a work), shall be of the best stone that can possibly be got in any of the quarries wrought in the parish of : AND such stones as shall be made use of in the said piers and abutments, and also in each of the arches of the said intended bridge, shall be of such dimensions, or of such weights, as the surveyor

If surveyor should judge additional piles necessary, after foundations excavated,

contractors to drive same;

but the piles to be provided by commissioners.

To cut off additional piles.

Commissioners to make recompence for driving and sawing additional piles, to be ascertained by surveyor.

Further agreement by contractors.

Piers to be of best stone.

Stone to be of such dimensions as surveyor shall direct.

BUILDING A BRIDGE.

of the said works for the time being may deem necessary, or shall think fit to direct: AND that the first course of stone in each of the said piers shall entirely fill up the space contained within the heads of the dovetail piling: AND (in case the surveyor of the said works for the time being shall not direct stone of larger dimensions to be made use of) that no stone in the piers, from the foundation to the high water surface, shall be less than fourteen inches thick: AND the stone, blockwork, and stretchers, shall break joint on the face of the work one foot at least; and the heading courses shall break joint inwards towards the middle of the work, one foot at least; and the heading courses also shall break joint at least one foot on the face of the work: AND that all the vertical joints in all the leading courses shall be square, one foot at the least inwards towards the middle of the work, from the outward faces of such courses: AND the vertical joints of the stretchers shall be square, at least one foot from the face inwards towards the middle of the work: AND the horizontal joints shall be good the whole breadth of the stone: AND that the asher stones shall break joint at least one foot, where it can be done: AND that no beds of the ashers shall be less than nine inches broad: THE headings, or bond stones, shall not be less than two feet four inches long; and the inner end shall be larger than the outside head or face; and that there shall be one such bond stone in every ten feet length in every course; and no two bond stones shall be within four feet of each other; AND ALSO, that all the beds of the stones, from the foundations to the surface of the low water, shall be good scalped work: AND that all the beds and joints of the stones from the surface of low water upwards, shall be good hewn work; and from the foundations to high water surface, shall be laid in good Dutch terrass, five inches at least from the face, as is usual in such work: AND that all the piers, the two half piers and abutments, shall be of hewn work from high water surface to the top of the parapet: AND that all the spandrels shall be scalped work; and that all the stones in that course, or bed, or layer of stone block, in every pier, and in each half pier and abutment, that shall be immediately below or at the surface of low water, shall be cramped and fastened together with dovetail oak cramps, each of

First course.

No stone to high water surface to be less than fourteen inches thick.

Stone, &c. to break joint.

Vertical joints to be square.

Horizontal joints.

Asher stone.

Beds of ashers.

Bond stones.

Beds and joints of stones.

Piers.

Spandrels.

Stones under low water mark, to be cramped.

BUILDING A BRIDGE.

which cramps shall not be less than one foot six inches long, ten inches broad at the ends, six inches broad in the middle, and three inches thick, or of such other sizes and dimensions, as the surveyor of the said works for the time being shall direct; and that particular thick, broad, and long stones, shall be made use of in the course to be so cramped and fastened together: AND that each block stone to be made use of in the said piers, shall measure three inches both in length and breadth, more than in height or thickness: AND that all and every part of the said five arches of the said intended bridge, shall be done, executed, and performed, in a good, substantial, and workmanlike manner, with the best block stone that can possibly be procured or gotten in any of the above mentioned quarries; and to be of such sizes and dimensions as the surveyor of the said works for the time being shall direct, or so near to such dimensions as such stones can be got: AND that each single stone to be made use of in the said arches shall measure three inches at least, both in breadth and length, more than in height or thickness; AND that no vertical joint in any of the said five arches, nor in any other part of the said intended bridge, shall be within one foot of the course immediately below it: AND that all the outward ends of all the arch-stones shall be formed and rusticated according to the shape and sizes determined by the said plan, elevation, and sections: AND that the parapets or battlements of the said intended bridge shall be of hewn stone, and correspond in form with the drawing shown in the said plan, that is to say, that the several spaces between the several recesses made upon the several piers of the said intended bridge, shall be divided into a convenient number of equal spaces, and that stones of about twelve by eighteen inches square and three feet long, shall be placed and well fastened with their ends upon the façade or *facia*; each of which stones shall have a groove or recess cut in the two opposite edges thereof, six inches wide and about two inches deep, to receive the edges of broad long stones six inches thick and about three feet broad or high; and which are to stand upon their edges on the said facia, between the said first mentioned stones, so as to form a pannel between the said three feet high

Dimensions of cramps.

Long and broad stones to be used under water.

Dimensions of pier stones.

Arches to be executed in workmanlike manner.

With best block stone, from certain quarries,

of such dimensions as surveyor shall direct.

Dimensions of stones in arches.

Vertical joints.

Outward ends of arch stones.

Parapets.

BUILDING A BRIDGE.

stones and the facia, and the coping of the parapet or battlement of the said intended bridge; and so as that no joint may be seen directly on the face of the parapet: AND ALSO that there shall be sufficient iron cramps across every joint at the top of the coping of the parapet, and that each corking of the said cramps shall be upset, and two inches long from the outside of the cramp; and that each cramp shall be one inch square at least, and a foot long between the corkings, and sunk well in the said coping, as the surveyor of the said works for the time being shall direct; and shall be inlaid and run flush with lead: AND that proper hard stones (where there is no foot path) shall be placed on end against the parapet, to keep carriages from striking against it: AND ALSO that all the spaces in the haunches, or behind the spandrell walls of the arches; all the butments of the bridge and cross walls, as described and expressed in the said plans or drawings, shall be executed in a good, substantial, and workmanlike manner in rubble work, to consist of the largest flat bedded stones carefully packed with smaller ones and mortar; the large stones to be laid so as to break bond, in a workmanlike manner: AND such rubble work shall be executed at the same time and incorporated with the other work, and with stones to be got in quarry, if the surveyor of the said works for the time being should approve of the same: AND ALSO that a foot passage on the side of the carriage road shall be made and executed in a good, substantial, and workmanlike manner, with the best and hardest flags that can be got in any of the said quarries, in the said parish of ; such flags to be a foot and a half in length, a foot in breadth, and at least six inches in thickness: AND ALSO that proper places shall be cut in the outward edges of the said footways for the reception of large stones, at such convenient distances as the surveyor of the said works for the time being shall judge necessary, for the sake of preventing the said footway receiving damage from carriages: AND the whole of the said footway shall be laid and performed upon the rubble work; and shall in every part thereof, be four feet broad, and raised six inches above the surface of the carriage road: AND ALSO shall and will make such channels or conduits for carrying off the water from the said intended

Iron cramps to parapet.

Dimensions of cramps.

Stones to be placed for keeping off carriages.

Butments, &c. to be executed in workmanlike manner.

Rubble work.

Foot passage to be made in workmanlike manner.

Excavations to be made for stones to keep off carriages.

Footway to be laid on rubble-work,

and be four feet broad, &c.

To make channels to carry off water.

BUILDING A BRIDGE.

bridge, in such manner as the surveyor of the said works for the time being shall direct: AND ALSO, that all such parts of the works of the said intended bridge as are not hereinbefore contracted for and agreed to be erected and built in any particular manner hereinbefore specified and described, shall be constructed with such materials, and executed and performed in such manner, as the surveyor of the said works for the time being shall direct: AND that all and every part of the works of the said intended bridge shall be performed and executed in a strong, well-beaten, and incorporated mortar, composed of a strong, quick, stone lime, and a sufficient quantity of clear river sand, with a sufficient quantity of the best Dutch terrass, in such parts of the said works as the surveyor thereof for the time being shall direct; and before such mortar is made use of the same shall be approved by such surveyor. PROVIDED ALWAYS, *and it is agreed and declared* between all the said parties, that if the said [*commissioners*], or any or more of them, should at any time or times hereafter think proper to direct any alterations to be made in the form or quantities of the works hereinbefore agreed to be performed before the same shall be performed, *Then*, and so often, and in every such case, they the said [*mason* and *carpenter*], their executors and administrators, shall pursue such directions as they shall in that behalf receive from the same [*commissioners*], or any or more of them; and execute and perform the same in a strong, proper, and workmanlike manner: AND that it shall be referred to the surveyor for the time being of the said works to consider, and by some writing under his hand to determine, how far such alterations on the whole will be a saving or additional expense to the said [*mason* and *carpenter*], their executors and administrators; *and* if the same should appear to be a saving, the sum saved shall be abated out of the last payment of the said hundred pounds; *but* if such alterations on the whole should appear to be attended with an additional expense, the same shall be satisfied and made good to the said [*mason* and *carpenter*], their executors and administrators, by the said [*commissioners*], over and above the said hundred pounds, within three months next after finishing and completing the said bridge: AND THE

Works not specified, to be done as surveyor shall direct.

Strong well beaten mortar to be used.

Trustees may make alteration in works, and in such case,

surveyor to settle difference in expense.

BUILDING A BRIDGE.

said [*mason* and *carpenter*] jointly and severally, and for their several and respective heirs, executors, and administrators, do and each of them doth further covenant, promise, contract, and agree with the said [*commissioners*], their executors and administrators, that if any of the materials before agreed to be provided, made use of, or employed by them, in or about the works of the said intended bridge, should be found defective by the surveyor of the said works for the time being, *Then* and in such case, all such defective materials shall be forthwith removed at the expense of the said [*mason* and *carpenter*], their executors and administrators, and others in all respects fit, proper, and sufficient, and to the satisfaction of the same surveyor, shall be immediately provided and made use of, in the place and stead of such as shall be deemed defective: And that if any part of said works should be found defective by the surveyor of the same for the time being, in point of workmanship, (as by a bad disposition of the materials, or otherwise) *Then*, and in every such case, such defective work shall be forthwith pulled down and removed, at the expense of the said [*mason* and *carpenter*], their executors and administrators, and immediately rebuilt in a complete workmanlike manner, to the satisfaction of the same surveyor: And further, that they the said [*mason* and *carpenter*], their executors and administrators, shall find and provide, at their own expense, all and all manner of centers, scaffolding, machinery, instruments, tools, tackle, cables, ropes, boats, barges, lighters, carriages, cranes, and all other materials whatsoever, for executing and performing all the work whatsoever necessary for the beginning, carrying on, constructing, completing, and finishing of the said intended bridge, (*except* as before excepted): And also shall and will do, execute, and perform all and all manner of labour and workmanship that shall be necessary or proper for the moving, removing, doing, executing, performing, and completing, the several and respective parts of the said intended bridge; and bear, pay, and defray, all the necessary and incidental charges and expenses whatsoever which shall attend the same; it being the intent and meaning of this agreement, and the parties hereto, that the said [*commissioners*] are not to be at any further or other expense

Covenant by contractors, that if surveyor should think any materials not proper, they would remove them, and provide such as are proper at their own expense.

If any part of works be found defective, such part to be pulled down, and rebuilt at expense of contractors.

Contractors to provide machinery, tools, &c. for building bridge.

Contractors to execute every kind of labour.

Commissioners to be at no other expense than what they covenant to bear.

BUILDING A BRIDGE.

in and about the beginning, building, completing, and finishing the said intended bridge, than what is hereinbefore and hereinafter expressly covenanted, contracted, and agreed to be by them paid, done, and performed: AND MOREOVER, that they the said [*mason* and *carpenter*] shall and will, during the whole time of building the said intended bridge, give due personal attendance upon the execution of all the works aforesaid; and take effectual care that the same be carried on, executed, and performed, with such expedition and dispatch, that the said intended bridge be made passable for foot passengers on or before next; and for horses, carts, and carriages, on or before next; and in every respect completed and finished on or before : AND that if it should happen that the said intended bridge shall not be passable, completed, and finished as aforesaid, within the times aforesaid, through or by reason or means of any neglect or default of them the said [*mason* and *carpenter*], or either of them, or their or either of their executors or administrators, or of their or any of their workmen or servants, in the performance of any of the said works contracted to be done, executed, and performed, *Then* that they the said [*mason* and *carpenter*], their executors and administrators, shall forfeit and pay unto the said [*commissioners*], their executors and administrators, the sum of fifty pounds of lawful money of Great Britain [and Ireland], by the month, for each and every calendar month which shall be taken up in the finishing or completing the said intended bridge, after the said day of ; such forfeitures to be retained and deducted out of so much of the said sum of hundred pounds, as for the time being shall remain unpaid: AND THE SAID [*commissioners*], in consideration of the premises, do, and each and every of them doth, for themselves jointly and severally, and for their several and respective heirs, executors, and administrators, covenant, promise, contract, and agree, with the said [*mason* and *carpenter*], their executors and administrators, that they the said [*mason* and *carpenter*], their executors or administrators, duly executing and performing all and every the articles, clauses, covenants, agreements, matters, and things, on their several and respective parts to be observed, done, and performed, according to the true intent

Contractors to give personal attendance, and finish bridge if possible before a certain day; and if not finished by that time, owing to their neglect, to incur a penalty.

Covenant by commissioners, to pay remainder of sum for which bridge is to be built, by instalments, at different stages of the work.

and meaning of these presents, and of the parties hereto, *They* the said [*commissioners*], their heirs, executors, or administrators, shall and will pay, or secure to be paid, to the said [*mason* and *carpenter*], their executors or administrators, the sum of pounds, residue of the said sum of hundred pounds in full, for the building and completing the said intended bridge, in manner following, that is to say; the sum of pounds when the frame for the foundation of each of the piers shall be laid, and also the abutments; the sum of pounds when each of the piers and abutments shall be (*of a certain height*); the sum of pounds when each arch shall be closed; the sum of pounds when the spandrells and piers shall be carried to their full height, and ready for the facia or seat of the parapet; and the residue of the said sum of hundred pounds within three months after the said bridge shall be finished. BUILDING A BRIDGE.

And the said [*commissioners*] do, and each and every of them doth for themselves jointly and severally, and for their several and respective heirs, executors, and administrators, covenant, promise, and agree with the said [*mason* and *carpenter*], their executors and administrators, that they the said [*commissioners*], their heirs, executors, or administrators, shall and will make satisfaction to the owners or occupiers of lands, on either side of the said river, which may be injured by carrying on the said intended works; And also shall and will indemnify, save harmless, and keep indemnified, the said [*mason* and *carpenter*], their executors and administrators, of, from, and against the same; and all actions, suits, claims and demands, costs, charges, damages, and expenses whatsoever, which shall or may be borne or paid by the said [*mason* and *carpenter*], their executors or administrators, by reason or on account thereof. Provided always, *and it is hereby further agreed* between the said parties, that if any damage by floods, or other inevitable accident, should happen to the said works which the said [*mason* and *carpenter*], their executors or administrators, shall not have it in their power to prevent, the same shall be made good and repaired by the said [*mason* and *carpenter*], their executors and administrators, at the expense of the said [*commissioners*]; *but* if such damage

Commissioners to make satisfaction to the proprietors of lands on each side of river, to which any damage may be done by carrying on works, and to indemnify contractors therefrom.

If damage happen to works by floods, &c. which contractors could not prevent, commissioners to repair same..

BUILDING A BRIDGE.

should happen, owing to, or in consequence of, the neglect or default of the said [*mason* and *carpenter*], or either of them, their executors or administrators, the same shall be immediately remedied and made good at their own expense. (ADD *arbitration clause, ut ante,* 280.) AND, LASTLY, for the performance of all the covenants and undertakings herein contained on the parts of the said [*mason* and *carpenter*], their executors and administrators, they the said [*mason* and *carpenter*] jointly and severally bind themselves, their heirs, executors, and administrators, to the said [*commissioners*], their executors and administrators, in the sum or penalty of pounds, with interest: (AND for the performance of all the covenants and agreements herein contained on the parts of the said [*commissioners*], their executors and administrators, they the said [*commissioners*] jointly and severally bind themselves, their heirs, executors, and administrators, to the said [*mason* and *carpenter*], their executors and administrators, in the sum or penalty of (*a*) pounds, with interest.) IN WITNESS, &c.

Arbitration clause.

Nomine pœnæ on part of contractors.

Nomine pœnæ on part of commissioners.

(*a*) *Vide ante,* 47. (*h*)

AGREEMENT *for* BUILDING *or* COMPLETING *a* SHIP. BUILDING A SHIP.

ARTICLES OF AGREEMENT indented and made the day of , in the year 18 ; BETWEEN [*builder*], of, &c. ship builder, of the one part, and [*merchant*], of the same place, merchant, of the other part. Parties.

WHEREAS (*a*), it hath been agreed by and between the parties hereto, that the said [*builder*] shall at his present place of building, on or before the day of next, in a workmanlike manner, build for the said [*merchant*] the hull of a ship or vessel of the dimensions hereinafter mentioned, for the price or sum of thousand hundred pounds, and such further and other sum and sums of money, to be ascertained and paid at such times and in such manner as hereinafter is mentioned and Recital of contract.

(*a*) If it be a contract for finishing a ship already upon the stocks, say, FINISHING.

"WHEREAS there is now upon the stocks in the yard of the said [*builder*], at, &c. , the hull of a ship of the following dimensions, that is to say (*state the dimensions*, as in the next page) ; AND WHEREAS the hull of the said ship is already (*state the degree of forwardness*) ; AND WHEREAS the said [*merchant*] hath contracted and agreed with the said [*builder*], for the purchase of the hull of the said ship as she now stands, for the sum of pounds ; and hath also contracted and agreed with the said [*builder*], for completing the hull of the said ship, in manner and upon the terms hereinafter mentioned."

BUILDING A SHIP.

specified. In consideration of which agreement, and of the sum of hundred pounds, part of the said sum of thousand hundred pounds, by the said [*merchant*] to the said [*builder*] in hand paid at or before the execution of these presents, the receipt whereof is hereby acknowledged, *he* the said [*builder*] doth covenant, promise and agree, to and with the said [*merchant*], his executors, administrators, and assigns, to build and construct for him the said [*merchant*], his executors, administrators, or assigns, the hull of a ship or vessel of the following description or dimensions, that is to say; that the keel of the said hull shall be in length within the posts eighty feet; the rake afore to be ten feet, the rake abaft to be suitable; the harpins to lie at fourteen feet forwards, and fifteen feet aft; the hull at the dead flat to be in breadth twenty-eight feet; the birth thereof to be nineteen feet from the top of the ceiling to the top of the covering board; the square of the floor to be fifteen inches on the keel, and eleven inches at the sirmark; the timbers to be eight inches square at the binds, and four inches at the top timber heads; the transom to be eighteen feet long; the post four feet broad; the plank from the keel to the binds to be three inches thick, *except* five strokes on each side, *viz.* three on the bilge and two under the binds, which are to be four inch plank; the hull to have three binds, each ten inches deep and seven inches thick; one stroke immediately above the binds to be four inch plank, all the rest to the channel bind three inch plank, and above the channel bind to be two inch and a half plank; to have twelve hold beams, thirteen inches square, with eight hooks forward, all whole transoms aft, and one hook to be ceiled with three inch plank from the keel to the underside of the hold beams, *except* three strokes on the bilge on each side, four inch plank; all the ceiling, from the hold beams to the upper deck beams, to be two inch and a half plank, *except* one long plank under the main deck beam, which is to be four inches thick; to be ceiled fore and aft with two inch and a half plank, and above the binds forward with two inch plank; to have one four inch plank to be bolted to the fore beam and transom knees, to be bolted through the side into the beams: the main deck to be laid with Norway

Agreement to build a ship.

Part of the money paid.

Dimensions of ship, and descriptions of materials to be used.

BUILDING A SHIP.

decks three inches thick, two abaft the main mast, and from thence to be two inch and a half plank; to have a sufficient number of main deck beams; to have two feet ten inches waste, and two drifts fore and aft two feet deep; the quarter deck and forecastle deck to be laid with Norway deals two inches thick; the floors to be sixteen feet long, with fourteen inches rise; the binds to have two feet and a half hang; the covering boards in the midships to be two inch and a half plank; to have windlass, capstan, catheads, rudder, and tiller, all of sound good oak, of a size and construction fit for such a vessel; to have fourteen gunports; all the timbers and planks to be made use of in building the hull of the said vessel, *except* the planks with which the decks are laid, and which are to be of Norway deal as aforesaid, are to be oak of English growth, well seasoned and dried, and in every respect fit for the purposes to which the same shall be applied; the trennels shall be bought at London, and be of the best sort; the hatches shall be made and constructed in the best and most approved manner; the hull and deck of the said vessel shall be well caulked with well teazed oakum, and fitted up and finished in a substantial and workmanlike manner, with all things necessary and usually made and provided by ship builders for ships of such burthen and construction as the said intended vessel shall be; and the said ship or vessel shall, on or before the said day of , be launched, and brought and moored in safety in the harbour of .

To be launched in a certain time.

AND THE SAID [*merchant*], in consideration of the said ship being so built and launched as aforesaid, doth covenant, promise, and agree, to and with the said [*builder*], his executors, administrators, and assigns, in manner and form following, that is to say; *That* he the said [*merchant*], his heirs, executors, or administrators, shall and will well and truly pay(*b*) or cause to be paid unto the said [*builder*], his executors, administrators, or assigns, the further sum of hundred pounds, other part of the said sum of thousand hundred pounds, upon laying the

Covenant to pay remainder of price of ship at certain stages of the work.

(*b*) It might be prudent in some instances, for the person for whom the ship is built to give a bond for payment of the money.

BUILDING A SHIP.

harpins of the said vessel; hundred pounds more, other part of the said sum of thousand hundred pounds, upon laying the deck; and hundred pounds, the residue of the said sum of thousand hundred pounds, upon launching and mooring the said vessel in safety in harbour: AND ALSO such other sum and sums of money as [*referees*], of, &c. shall, within ten days from the time of mooring the said vessel in safety in harbour as aforesaid, in that behalf think reasonable; *or* in case either of them should die or refuse to undertake such determination, Then such sum and sums of money as two indifferent persons, the one to be nominated by the said [*builder*], his executors or administrators, and the other by the said [*merchant*], his executors or administrators, shall, within fifteen days from the time aforesaid, in that behalf resolve and determine upon, in order to complete the price of the said hull: *And* in default of any such determination, within the respective times hereinbefore for that purpose limited, then the said [*merchant*], his heirs, executors, or administrators, shall pay to the said [*builder*], his executors, administrators, or assigns, such sum or sums of money, for the purpose last mentioned, as shall be resolved upon and determined by such one indifferent person as the two referees who shall undertake the determination of the said matter shall for that purpose nominate and appoint umpire in the premises, who shall determine the same within ten days after he shall be appointed umpire: AND that the determination to be made as aforesaid shall be conclusive on the said parties hereto, their respective executors and administrators: AND that the sum and sums of money so to be ascertained and determined, shall within ten days after such determination be paid by the said [*merchant*], his heirs, executors, or administrators, to the said [*builder*], his executors, administrators, or assigns: AND *it is further agreed* between the said parties hereto, that all differences arising between them, touching the said hull, shall in like manner be referred and determined, and that every such determination shall be final and binding. AND THE SAID [*merchant*] agrees to provide for the carpenters employed in the build-

Covenant to pay such further sum as referees shall determine.

Umpire.

Determination to be final.

Money to be paid in ten days after determination.

Differences to be referred to arbitration.

Merchant to provide carpenters with bread, cheese, and ale.

BUILDING A SHIP.

ing of the said hull, during such time as they shall be so employed, such allowances of bread, cheese, and ale, as are usual in such cases; AND *it is also agreed* between the said parties hereto, and particularly the said [*builder*] doth agree, that the same hull, from time to time during the building thereof, and until the same shall be so moored in safety as aforesaid, and assigned to the said [*merchant*], his executors or administrators, shall stand charged with and be a security to him and them for the said sum of hundred pounds already paid, and for such further and other sum and sums of money as shall be paid to the said [*builder*], his executors, administrators, or assigns, in pursuance of this agreement; *To the intent* that the said hull shall not be or become liable or subject to the debts, contracts, or engagements, or otherwise affected by any act of the said [*builder*], his executors or administrators, to the prejudice of the said [*merchant*], his executors or administrators: AND that the said [*builder*], his executors or administrators, shall and will, after the said hull shall be so moored in safety in the harbour of as aforesaid, by some proper deed or instrument in writing, assign the same, free from all incumbrances, to the said [*merchant*], his executors or administrators, at his and their request, costs, and charges. IN WITNESS, &c.

Ship whilst building, to stand charged with monies advanced.

Builder, after ship is launched, to assign her to purchaser.

ANNUITY.

AGREEMENT.

AGREEMENT *for granting an* ANNUITY (*a*) *for the Life of the Grantor, or for the Life of the Grantee, or for the Lives of other Persons, to be secured on* FREEHOLD, COPYHOLD, *or* LEASEHOLD *Premises, with or without a* SURETY.

(*a*) By the 53 Geo. III. cap. 141, intituled "*An Act to repeal an Act of the Seventeenth Year of the Reign of his present Majesty, intituled* An Act for registering the Grants of Life Annuities, and for the better Protection of Infants against such Grants; *and to substitute other Provisions in lieu thereof;*" and which received the royal assent 14th July, 1813: After reciting that it was expedient that the said act, 17 Geo. 3. c. 26, should be repealed, and other provisions substituted in lieu thereof, IT ENACTED, That the said recited act shall be and the same is hereby repealed, save and except so far as regards any annuities or rent charges, which have been granted before the passing of this act.

17 G. 3. c. 26. repealed, except so far as regards annuities or rent charges, previously granted.

Annuities, &c. to be enrolled in Chancery.

II. And that within thirty days after the execution of every deed, bond, instrument, or other assurance, whereby any annuity or rent charge shall, from and after the passing of this act, be granted for one or more life or lives, or for any term of years, or greater estate determinable on one or more life or lives, a memorial of the date of every such deed, bond, instrument, or other assurance, of the names of all the parties and of all the witnesses thereto, and of the person or persons for whose life or lives such annuity or rent change shall be granted, and of the person or persons by whom the same is to be beneficially received, the pecuniary consideration or considerations for granting the same, and the annual sum or sums to be paid, shall be enrolled in the High Court of Chancery, in the form or to the effect following, with such alterations therein as the nature and circumstances of any particular case may reasonably require: otherwise every such deed, bond, instrument, or other assurance, shall be null and void, to all intents and purposes.*

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* [These words have however been construed to mean *voidable* only, at election of the party. *Davis* v. *Bryan*, 6 Barn. and C. 651. *Ed.*]

Date of Instrument.	Nature of Instrument.*	Names of Parties.	Names of Witnesses.†	Name or Names of Person or Persons by whom Annuity or Rent Charge to be beneficially received.	Person or Persons for whose Life or Lives the Annuity or Rent Charge is granted.	Consideration, and how paid.	Amount of Annuity or Rent Charge.
10 Aug. 1813.	Indentures of Lease and Release.	A. B. of one part. C. D. of the other part.	E. F. of G. H. of	C. D.	A. B.	£100 paid in money. £500 paid in notes of the Governor & Company of the Bank of England, or other notes or bills of exchange, as the case may be.	£100 a Year.
Same date.	Bond in Penalty of £1,200.	A. B. to C. D.	E. F. G. H.	For securing the same Annuity, or Rent Charge.			
Same date.	Warrant of Attorney to confess judgment on the same bond.	A. B. to I. K. and L. M. Attornies of Court of King's Bench.	E. F. G. H.				

* [On this expression it has been very lately held, that the precise kind of instrument, as a lease and release, need not be mentioned: the words "*grant of annuity*" will be sufficient. *Browne* v. *Lee*, 6 B. and C. 689. *Ed.*]

† [As to the manner in which the witnesses are to be described in the memorial, see 53 Geo. IV. c. 92. s. 1. and 7 Geo. IV. c. 75; *et post*, 336 *et seq.* *Ed.*]

AGREEMENT.

Companies to be described by their usual firm.

III. Provided, That if any such annuity shall be granted by, or to or for the benefit of any company exceeding in number ten persons, which company shall be formed for the purpose of granting or purchasing annuities, it shall be sufficient in any such memorial to describe such company by the usual firm or name of trade.

Names of parties beneficially interested, to be stated.

IV. And, That in every deed, bond, instrument, or other assurance, whereby any annuity or rent charge shall, from and after the passing of this act, be granted or attempted to be granted, for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, where the person or persons to whom such annuity shall be granted or secured to be paid, shall not be entitled thereto beneficially, the name or names of the person or persons who is or are intended to take the annuity beneficially shall be described in such or the like manner as is hereinbefore required in the enrolment; otherwise every such deed, instrument, or other assurance, shall be null and void.

Copies of the deeds or instruments securing such annuities may be obtained.

V. And, That in case any person or persons, by whom any annuity or rent charge, of which such particulars as aforesaid are hereby required to be enrolled, shall for the time being be payable, shall be desirous of obtaining a copy of every or any deed, bond, instrument, or other assurance, whereby such annuity or rent charge was granted, and of such his, her, or their desire, shall give twenty-one days notice in writing to the person or persons for the time being entitled to such annuity or rent charge, such person or persons shall, on or before the expiration of such twenty-one days, unless prevented by fire or other inevitable accident, and in that case if the assurances shall not be destroyed by such accident, then as soon after as such impediment shall be removed, send or deliver to the person or persons requiring the same, a copy of every deed, bond, instrument, or other assurance, whereby such annuity or rent charge was granted, or of such of the assurances as in such notice shall be required; and such last mentioned person or persons shall, at the time of receiving the same, pay to the person or persons, furnishing the same, a sum after the rate of sixpence for every one hundred words contained in every such copy, and also the reasonable costs of sending or delivering the same, and the person or persons holding the original instruments by which such annuity or rent charge shall be secured shall suffer the person or persons to whom such copies shall be delivered or sent to examine the same with the originals; and in case such copies shall not be sent or delivered, or the person or persons holding the original instruments shall refuse to suffer such copies to be examined therewith according to the direction in this act, it shall be lawful for the person or persons by whom the annuity or rent charge is payable to take out a summons from any of His Majesty's justices of his Courts of King's Bench and Common Pleas, requiring the person or persons neglecting to send or deliver such copies, or re-

Charges for copies.

In case of default, to summon party refusing to deliver copies before judge.

fusing to suffer the same to be examined with the original instrument as aforesaid, to appear before such judge and shew cause in the premises; and it shall and may be lawful for the judge before whom such person or persons shall be summoned to make such order for the production of the instruments by which such annuity or rent charge shall be secured, and for suffering the complainant to take copies thereof, and examine the same, or the copies delivered with the original instruments, and otherwise in the premises, as to such judge shall seem meet. AGREEMENT.

In what cases proceedings against the grantor of an annuity may be stayed.

VI. And, That if any part of the consideration for the purchase of any such annuity or rent charge shall be returned to the person advancing the same, or in case such consideration, or any part of it shall be paid in notes, if any of the notes, with the privity and consent of the person advancing the same, shall not be paid when due, or shall be cancelled or destroyed without being first paid; or if such consideration is expressed to be paid in money, but the same or any part of it shall be paid in goods; or if the consideration or any part of it shall be retained, on pretence of answering the future payments of the annuity or rent charge, or any other pretence; in all and every the aforesaid cases, it shall be lawful for the person by whom the annuity or rent charge is made payable, or whose property is liable to be charged or affected thereby, to apply to the Court in which any action shall be brought for payment of the annuity or rent charge, or judgment entered by motion to stay proceedings on the action or judgment, and if it shall appear to the Court that such practices as aforesaid, or any of them, have been used, it shall and may be lawful for the Court to order every deed, bond, instrument, or other assurance, whereby the annuity or rent charge is secured, to be cancelled, and the judgment, if any has been entered, to be vacated. (*a*)

A book shall be kept by the clerks of enrolment in Chancery.

VII. And that a particular book shall be provided and kept by the clerks of the inrolments in chancery, or their deputy, in which such particulars as hereinbefore are mentioned shall be entered alphabetically, by the names of the grantors, in order of time as the same shall be brought to the office; and the said clerks of the inrolments, or their deputy, shall specify in the book the certain day, hour, and time on

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Construction of the 6th section.

(*a*) [Under the section 4. of the 17 Geo. III. c. 26. corresponding to this, it was held that, it is not imperative on the Court to vacate the securities of annuity where the provisions of the act have not been complied with, but it has a discretionary power to do so on terms offered. *Girdlestone* v. *Allan*, 6 B. and A. 61. and 2 Dow. and Ry. 150. and see *Barber* v. *Gamson*, 4 B. and A. 281. and Vol. II. 324, in which the same rule was adopted respecting the new act. *Const* v. *Phillips*, 4 D. and R. 344. *Ed.*]

AGREEMENT.

which such particulars are brought to the office, and shall grant a certificate of the entry thereof, when required; and that there shall be paid for every such entry twenty shillings only, and the fee of one shilling for every certificate and copy given, and the fee of one shilling for every search in the office, and no more.

Contracts for the purchase of annuities, by persons under age, to be void.

VIII. And that all contracts for the purchase of any annuity or rent charge with any person, being under the age of twenty-one years, shall be and remain utterly void, any attempt to confirm the same after such person shall have attained the age of twenty-one years notwithstanding: And that if any person shall, either in person, by letter, agent or otherwise howsoever, procure, engage, solicit or ask any person, being under the age of twenty-one years, to grant or attempt to grant any annuity or rent charge, or to execute any bond, deed, or other instrument for securing the same, or shall advance or procure or treat for any money to be advanced to any person under the age of twenty-one years, upon consideration of any annuity or rent charge to be secured or granted by such infant after he or she shall have attained his or her age of twenty-one years, or shall induce, solicit, or procure any infant, upon any treaty or transaction for money advanced or to be advanced, to make oath or to give his or her word of honour or solemn promise, that he or she will not plead infancy, or make any other defence against the demand of any such annuity or rent charge, or the re-payment of the money advanced to him or her when under age, or that when he or she comes of age, he or she will confirm or ratify, or in any way substantiate such annuity or rent charge, every such person shall be guilty of a misdemeanor; and being thereof lawfully convicted in any court of assize, oyer and terminer, or general gaol delivery, shall and may be punished for the said offence, by fine, imprisonment, or other corporal punishment, as the court shall think fit to award.

For punishing persons endeavouring to induce infants to grant annuities.

For punishing brokers and others for demanding, &c. more than 10*s.* per cent. as procuration money.

IX. And that all and every solicitors and solicitor, scriveners and scrivener, brokers and broker, and other persons or person, who from and after the passing of this act, shall ask, demand, accept, or receive, directly or indirectly, any sum or sum of money, or any other kind of gratuity or reward, for the soliciting or procuring the loan, and for the brokerage of any money that shall be actually and *bonâ fide* advanced and paid as and for the price or consideration of any such annuity or rent charge, over and above the sum of ten shillings for every one hundred pounds so actually and *bonâ fide* advanced and paid, shall be deemed and adjudged guilty of a misdemeanor, and being lawfully convicted of such offence in any court of assize, oyer and terminer, or general gaol delivery, shall and may for every such offence be punished by fine and imprisonment, or one of them, at the discretion of the court; and that the person or persons who shall have paid or given any sum

or sums of money, gratuity, or reward, shall be deemed a competent witness or witnesses to prove the same.

Not to extend to Scotland or Ireland, nor to annuities granted by will, &c.

X. And that this act shall not extend to Scotland or Ireland, nor to any annuity or rent charge given by will or by marriage settlement, or for the advancement of a child, nor to any annuity or rent charge secured upon freehold or copyhold or customary lands, in Great Britain or Ireland, or in any of his majesty's possessions beyond the seas, of equal or greater annual value than the said annuity, over and above any other annuity, and the interest of any principal sum charged or secured thereon, of which the grantee had notice at the time of the grant, whereof the grantor is seised in fee simple or fee tail in possession, or the fee simple whereof in possession the grantor is enabled to charge at the time of the grant, or secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said annuity; nor to any voluntary annuity or rent charge granted without regard to pecuniary consideration or money's worth; nor to any annuity or rent charge granted by any body corporate, or under any authority or trust created by act of parliament.

[Nor does the act extend to a fair and *bonâ fide* sale of an interest in land, where the consideration in whole or in part may be an annuity to the vendor, and in this case no memorial is necessary. *James* v. *James*, 2 Brod. and B. 702. and 5 J. B. Moore, 497. S. C. Nor where a party unconnected with the grantor, and for a separate consideration, guarantees the payment of an annuity, need the assurance be enrolled. *Sandilands* v. *Marsh*, 2 B. and A. 673. And see *Ex parte Price*, 3 Madd. 132. *Mason* v. *Phillips*, 5 M. and S. 349. *Darwin* v. *Lincoln*, *infra*, 357. *Blake* v. *Attersoll*, 2 B. and C. 875. Vol. II. 317. *Ed.*]

Inconvenience of former act.

The provisions of this act seem likely to prevent the litigation and uncertainty which prevailed under the repealed annuity act, under which, sect. III, it was necessary to state in the deed, &c. the name or names of the person or persons by whom, and on whose behalf, the consideration, or any part thereof, was advanced. It was at first thought that the words in the seventh column of the new act, "consideration and how paid," might be understood *in what manner*, which would lead to all the inconveniences intended to be remedied; but it now seems agreed, independently of the circumstance that there is no such express provision as in the previous act, nor any example given for such statement in the memorial, that the words are not open to that construction: the meaning is, that the amount of the consideration shall be stated, and whether paid in money, notes, bills, &c. This is clear, from the words of the act, which only require "the pecuniary

Consideration need not be stated in me-

AGREEMENT.

morial to have been paid by agent.

consideration or considerations for granting the same," to be stated in the memorial; it need not therefore be stated by or to whom the money was paid, for there is now no exception to the rule, that a payment by an agent is a payment by the principal. *Qui per alium facit per seipsum facere videtur.* Co. Litt. 258. a. Noy's Max. 58, 9th ed. 8 Mod. 365. Perhaps it escaped observation, on the progress of the act through parliament, that it extends as well to annuities granted for money's worth, (for example, for an estate or good will of a trade,) as for a *pecuniary* consideration; but as the act stands, it is clear that none but money considerations need be stated in the memorial. [See *Yems* v. *Smith*, 3 B. and A. 206. *Wood* v. *Perrot*, 5 J. B. Moore, 63. It is, however, now determined, that the act only extends to annuities granted for pecuniary considerations. *James* v. *James*, 2 B. and B. 702. and *infra*, 495; or for what may be converted into money. *Blake* v. *Attersoll*, 4 B. and C. 875. Vol. II. 326, *semble* that it only applies to the sales of annuities *for the purpose of raising money. Tetley* v. *Tetley*, 4 Bing. 214.] If the consideration be money, it must be correctly stated under the last stamp act; if it be stated as a money consideration, and any part be paid in goods, by sect. VI. the annuity may be set aside.

None but money considerations need be stated in the memorial.

Practice under former act as to annuities under ten pounds.

That part of the old act, which excepted out of its provisions annuities not exceeding *ten pounds,* is not inserted in the new act; because it was the practice with professed money lenders to divide the consideration into several parts, and make the person wanting the money grant annuities of ten pounds to different persons, to the amount agreed upon; whereby the expenses of the grantor were increased to a considerable amount, and publicity to the transaction avoided: therefore in considering the operation of the new act, it will be necessary to keep in view that it extends to annuities, although not exceeding *ten pounds;* and also embraces annuities granted for *money's worth.* In all other respects annuity deeds are now placed on the same footing with other deeds. Append. XII. Sug. Vend. 13, 5th ed.

New act extends to annuities under ten pounds, and those granted for money's worth.

Annuity deeds placed on same footing as other deeds.

[The Court will set aside proceedings on an annuity, for defect of enrollment, though the omission was at the instance of the defendant; as the act is imperative. *Anon.* 2. Chit. 34. See *Davis* v. *Bryan*, 6 B. and C. 651. *Ed.*]

Any other observations on the annuity act, which may be deemed necessary, will be mentioned in those places where, it is probable, the reader may require to be reminded of its provisions.

3 Geo. 4. c. 92. s. 1. Description of witnesses in memorial.

[By the 3* Geo. IV. c. 92, entitled, *an act to explain the* 53 *Geo. III.* it is enacted, I. that no further or other description of the *subscribing*

* [This act was passed to put an end to the doubts which arose from the cases of *Darwin* v. *Lincoln*, 5 B. and A. 444; *Smith* v. *Pritchard*, 5 B. and A. 717; Vol. II. 320, *St. John* v. *Champneys*, 1 Bing. 77; *Hart* v. *Lovelace*, 6 T. R. 476; and *Brown* v. *Rose*, 6 Taunt. 139.]

AGREEMENT.

ARTICLES OF AGREEMENT made and entered into the day of 18 ; BETWEEN [*grantor*], of, &c. of the one part, and [*grantee*], of, &c. of the other part. Parties.

FIRST, the said [*grantor*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree Agreement to deliver abstract.

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witness or witnesses to any instrument or assurance whereby any annuity may be granted is required in the memorial thereof, besides the names of all such witnesses, and that so the 53 Geo. III. c. 141. shall be construed.

II. Reciting that doubts have arisen under the 53 Geo. III. c. 141. whether the omission to enrol a memorial of any one of the assurances for securing any annuity does not vitiate the whole transaction. It is enacted that every deed, bond, instrument, or other assurance granting any annuity or rent charge, and of which a memorial shall be enrolled pursuant to the said act, notwithstanding the omission to enrol any other deed, &c. shall be valid and effectual, according to the intent, meaning, and true effect thereof, notwithstanding a memorial of any other deed, &c. for securing the same annuity shall not have been duly enrolled pursuant to the said act. s. 2. Enrolling memorial of other deed affecting annuity.

III. It is provided that this act shall not give any additional validity to any deed, &c. not enrolled. s. 3.

IV. It is provided that this act shall not give effect to any deed declared void by any court of law or equity, nor affect any suit commenced before the 3d of May, 1822. See Vol. II. 335, where the act is fully stated. s. 4.

By the 7 Geo. IV. c. 75. entitled, *An act* to explain the 53 Geo. III. c. 141. it is enacted, that no further or other name or names of the subscribing witness or witnesses to any deed, bond, instrument, or other assurance, whereby any annuity or rent charge is or may be granted, is or are required in the memorial thereof, besides the names of all such witnesses, as they shall appear signed to their attestations respectively of the execution of such deed, &c. 7 Geo. 4. c. 75. Description of witnesses in memorial. See *Check* v. *Jefferies*, 2 B. and C. 1. *Doe* v. *Bromley*, 6 D. and R. 292. *Metcalfe* v. *Bowes*, 5 B. and C. 258, and 8 D. and R. 773, S.C. by the name of *Metcalfe* v. *Strathmore*.

See a memorial of a grant of annuity, Vol. II. 319. And as to its requisites, *Yems* v. *Smith*, 3 B. and A. 206; *Barber* v. *Gamson*, 4 B. and A. 281 ; *Wood* v. *Perrott*, 5 J. B. Moore, 63 ; *Drake* v. *Rogers*, 2 Brod. and B. 19. 4 J. B. Moore, 402. *Tringham* v. *Bethune*, 7 Taunt. 429. *Poole* v. *Cabanes*, 8 T. R. 329. *Berry* v. *Bentley*, 6 T. R. 690. *Mason* v. *Phillips*, 5 M. and S. 369. *Morris* v. *Jones*, 2 B. and C. 232. *Butler* v. *Capel*, 2 B. and C. 251. *Crowther* v. *Wentworth*, 6 B. and C. 366. and Vol. II. 319, *et seq.* where most of the cases are stated. *Ed.*]

AGREEMENT. with the said [*grantee*], his executors, administrators, and assigns, to deliver unto the said [*grantee*], on or before the day of next, at the costs and charges of the said [*grantor*], a full, complete, and perfect abstract
FREEHOLD. of the title of the said [*grantor*], to ALL THOSE (*a*) freehold

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COPYHOLD. (*a*) If the premises be copyhold, say,

"ALL THOSE customary or copyhold messuages, &c. situate, &c. and now held by the said [*grantor*] for an estate of inheritance, according to the custom of the manor of in the said county of , subject to the rents and services therefore due, and of right accustomed."

FOR LIFE OR LIVES. If the premises be held for a life or lives, say,

"ALL those messuages, &c. situate, &c. now held by the said [*grantor*] for the life of [*nominee*] of, &c. (or lives of [*nominees*] of, &c. and the lives and life of the survivors and survivor of them), under and by virtue of an indenture
Reference to lease, bearing date on or about the day of 18 , and made between [*lessor*] of, &c. of the one part, and [*lessee*] of, &c. of the other part, and afterwards per-
with livery of seisin. fected by livery of seisin;* *But* the said [*grantor*] shall not be required to produce any further evidence of the title to the said premises, than the said lease (and a conveyance thereof from the said [*lessee*] to the said [*grantor*]." (†)

LEASEHOLD FOR YEARS, OR FOR YEARS DETERMINABLE ON LIVES. If the premises be leasehold, for years, or for years determinable on lives, say,

"ALL THOSE messuages, &c. situate, &c. now held by the said [*grantor*] for the remainder of a term of

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Underlease preferable on granting annuity out of leaseholds. * There is not any necessity in this instance to say, "subject to the rents, &c." because the grantor should covenant to pay the rents. And in the case of a lease for lives, it is prudent to take an underlease for ninety-nine years, if the nominees should so long live; and in the case of a lease for ninety-nine years, if nominees should so long live, to take an underlease for ninety-eight years, or any less period than ninety-nine years, if the same nominees should so long live; by which means there would remain a reversion in the underlessor, and the underlessee would not be liable to the rents or covenants in the lease, for want of privity of contract and estate with the original lessor, although the underlessee might pay and perform them, in order to preserve his possession. [See 537, *post*, and vol. II. 52 (*a*).]

† *Vide ante*, 46. 165. 261.

messuages, tenements, farms, lands and hereditaments, of the said [*grantor*] situate at , in the county of ; AND if the counsel of the said [*grantee*] (*b*) should be of opinion that the estate of the said [*grantor*] therein is a sufficient security for the annuity hereinafter mentioned, then that he the said [*grantor*] shall and will, within from the date hereof, in consideration of the sum of pounds, grant unto the said [*grantee*], his executors, administrators, and assigns, an annuity of pounds for the life of the said [*grantor*] (*c*), or [*grantee*], to be payable quarterly from the time of granting the same, with a proportional part thereof, up to and inclusive of the day of his death, and to be charged upon and issuing out of the said hereditaments and premises; and to be further secured by the bond and warrant of attorney to confess judgment of the said [*grantor*] (*d*) in such man-

AGREEMENT.

Premises.

If title good, to grant annuity.

LIFE OF GRANTOR OR GRANTEE.

Bond and warrant of attorney.

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years from the day of , (*or* for the remainder of a term of years, if [*nominees*] of, &c. any or either of them, should so long live), granted by indenture bearing date on or about the day of 18 , and made between [*lessor*] of, &c. of the one part, and [*lessee*] of, &c. of the other part; *But* the said [*grantor*] shall not be required to produce any further evidence of the title to the said premises, than the said lease (and all subsequent deeds, evidences and writings, relating thereto)."

Reference to lease.

(*b*) *Vide ante*, 81, (*a*).

(*c*) If for the lives of nominees, say,

LIVES OF NOMINEES.

"[*nominees*] of, &c. and the lives and life of the survivors and survivor of them, to be payable quarterly from the time of granting the same, with a proportional part thereof, up to and inclusive of the day of the death of the survivor of them,"

If for years determinable on lives, say,

YEARS, DETERMINABLE ON LIVES.

"For the term of years, from the day of granting the same, *If* the said [*grantor*] (*or* [*grantee*] or [*nominees*] of, &c. any or either of them) should so long live,"

(*d*) If it be the agreement, say,

SURETY.

"and [*surety*] of, &c. as his surety,"

AGREEMENT.

Usual covenants, powers, &c.

Securities to be prepared by grantee.

All charges to be paid by grantor.

To deliver title deeds.

ner and form, and with such proper and requisite parties, and such usual covenants, remedies and powers, either of sale or otherwise, for securing the payment thereof, as the counsel of the said [*grantee*] shall advise (*e*); the same several securities (and also a memorial thereof, if the same should be deemed necessary (*f*), to be prepared by the said [*grantee*]; but the costs and charges thereof, and of these presents (and a duplicate thereof), and all other costs, charges and expenses, in any wise attending the granting and securing the said annuity, to be paid and borne by the said [*grantor*]; AND ALSO at the execution of the said securities, deliver unto the said [*grantee*] all the title deeds and writings in the possession or power of the said [*grantor*] relating to the said hereditaments and pre-

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LEASEHOLD FOR LIVES.

(*e*) If the premises be leasehold for lives, and it be the agreement, say,

"*And* also a covenant by the said [*grantor*] from time to time to renew the said lease, at his own expense, for another life, when any of the said [*nominees*] or any renewed life shall die, and in case of his default a power enabling the said [*grantee*] to do the same, and for the monies and expenses incurred thereby, with interest for the same at five pounds per centum per annum, to become a charge on the said premises;"

LEASEHOLD FOR LIVES OR YEARS.

If the premises be leasehold, for lives, or years, say,

"*And also* a covenant by the said [*grantor*] to pay the rents reserved by the said indenture of lease, (*if for lives*, or any renewed lease of the said premises) and in case of his default, a power enabling the said [*grantee*] to pay the same, and for the monies and expenses incurred in consequence of such default, and payment with interest for the same, at five pounds per centum per annum, to became a charge on the said premises;"

Memorial sometimes unnecessary.

(*f*) If the annuity be within section X. of the act, a memorial would be unnecessary: however, from an abundance of caution, a memorial is sometimes enrolled in cases where it is not strictly necessary.

Agreement to grant annuity not within the act.

A memorial of an agreement *to grant* an annuity, is not within the act, because it only embraces "deeds, &c. whereby any annuity or rent charge shall *be granted*." [And see 342, *post*, n. (*a*).]

mises (*g*). AND THE SAID [*grantee*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantor*], his executors and administrators, to pay the sum of pounds, of lawful money of Great Britain [and Ireland], unto the said [*grantor*], at the time of executing the said securities. (AND *it is hereby further agreed*, that in case the said [*grantor*] should die before the said day of next, if the said securities, or one of them, should not have been previously executed, then these presents, so far as regards the granting of the said annuity, shall be void). IN WITNESS, &c. (*h*).

AGREEMENT.

Agreement by grantee to pay purchase money.

If grantor die before executing securities, annuity not to be granted.

(*g*) If it be the agreement, say,

"AND which said securities, or one of them, shall contain a covenant by the said [*grantor*], at his own expense, to appear at any office of insurance in London or Westminster, or to produce such vouchers as the office may require, of his residence and health, from time to time when required by the said [*grantee*], in order that he may insure any sum of money on the life of the said [*grantor*]; *And also* a covenant by the said [*grantor*] not to go upon the seas, or reside in foreign parts, or serve in any military or naval capacity, or do any other act contrary to the policy on which his life shall from time to time be insured, without giving notice of his intention to the said [*grantee*] at least one calendar month before doing any of the said acts; *And also* a covenant by the said [*grantor*] for payment of any additional sum for insurance in consequence of his doing any of the said acts; *And also* a covenant by the said [*grantor*], at his own expense, to insure such part of the said hereditaments and premises as are liable to be destroyed by fire, in the full value thereof, in some insurance office in London or Westminster, in the joint names of the said [*grantor*] and [*grantee*]; *And also* a proviso or agreement enabling the said [*grantor*] to repurchase the said annuity at any time (after the expiration of (*three*) years from the granting thereof), on giving (*six*) calendar months notice for that purpose, and paying all arrears and expenses which shall have been incurred in consequence of the non-payment of any part of the said annuity;"

Grantor to appear, &c. in order that his life may be insured.

Not to go on the seas, &c.

and to pay additional premium for going abroad, &c.

Grantor to insure premises against fire.

Power to repurchase.

(*h*) [It has been held, that on such an agreement as the above, no action at law could be maintained, although the instrument were enrolled. *In re Locke*, 2 Dow. & Ry. 603. *Ed.*]

ASSIGNMENT OF ANNUITY, COVENANT AND BOND.

Assignment, by Indorsement, *of an* Annuity *secured by the* Covenant *and* Bond *of the Grantor;* subject to Repurchase.

Parties.

Recital of contract for purchase.

Recital of entering up judgment.

Testatum.

THIS INDENTURE, made the day of in the year of our Lord 18 ; Between the within named [*grantee*] of the one part, and [*purchaser*] of, &c. of the other part (*a*). Whereas the said [*purchaser*] hath contracted and agreed with the said [*grantee*] for the purchase of the within mentioned annuity or yearly sum of pounds, at or for the price or sum of pounds. And whereas a judgment was on or about the day of , entered up on the within mentioned warrant of attorney in his majesty's court of king's bench at Westminster. Now this indenture witnesseth, that in pursuance of the said contract or agreement, and for and in consideration of the sum of pounds, of lawful money of Great Britain [and Ireland], by the said [*purchaser*] to the said [*grantee*] in hand paid, at or before the sealing and

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Grantor should be a party to assignment, or have notice of it.

(*a*) It is generally prudent to make the original grantor a party to the assignment of an annuity; at least it should be ascertained that there has been no previous assignment, and that the amount of the annuity has not been reduced by a repurchase of a part. This information may be generally obtained by application to the grantor. If the grantor be not a party to the assignment, he should have an immediate notice of it, which had better be in writing: this would prevent his pleading want of notice as an excuse for payment of the annuity to the assignor or a subsequent assignee. From an abundance of caution, some gentlemen recommend that the grantor be served with an attested copy of the assignment; however, a short notice in writing is sufficient.

ASSIGNMENT OF ANNUITY, COVENANT AND BOND.

delivery of these presents, the receipt whereof he the said [*grantee*] doth hereby acknowledge, and of and from the same and every part thereof doth hereby acquit, release, and discharge the said [*purchaser*], his executors, administrators, and assigns, and every of them. *He* the said [*grantee*] hath (*b*) bargained, sold, assigned, transferred, and set over; *And* by these presents *doth* bargain, sell, assign, transfer, and set over unto the said [*purchaser*], his executors, administrators, and assigns, THE within mentioned annuity or yearly sum of pounds; AND all powers and remedies for recovering and enforcing the payment thereof; AND ALSO the judgment so entered up upon the within mentioned warrant of attorney; *And* all benefit and advantage of the said judgment; *and* all sum and sums of money to be secured or obtained by virtue thereof: AND all the right, title, interest, claim, and demand whatsoever, as well legal as equitable, of him the said [*grantee*], in, to, and out of the said annuity or yearly sum of pounds, judgment, and premises, and in, to, and out of every of them, and of every part and parcel thereof respectively. TO HAVE, hold, receive, take, and enjoy the said annuity or yearly sum of pounds unto the said [*purchaser*], his executors, administrators, and assigns, from the day of now last past, for and during the life of the within mentioned [*grantor*] *or* [*nominee*]; *But subject* to such power of repurchase as is given or reserved to the said [*grantor*] by the within written indenture. AND TO HAVE, hold, receive, take, and enjoy the said judgment so entered up upon the said warrant of attorney, and all benefit and advantage thereof, unto the said [*purchaser*], his executors, administrators, and assigns, to and for his and their own absolute use and benefit. AND the said [*grantee*] doth hereby nominate and appoint the said [*purchaser*], his executors, administrators, and assigns, the lawful attorney and attornies of him the said [*grantee*] for him the said

Assignment of

annuity,

and all powers, &c.

and judgment, and all benefit, &c.

and all sums, &c.

All the right, &c.

Habendum of annuity.

Subject to repurchase.

Habendum of judgment.

Power of attorney to sue, &c. on judgment.

(*b*) A memorial of an *assignment* of an annuity need not be enrolled, because the annuity act 53 Geo. III, c. 141, *ante*, 330, only extends to "every deed, bond, instrument, or other assurance, whereby any annuity or rent charge shall be *granted*." [See also 448, *infra*, and the cases there cited.]

An assignment of an annuity need not be enrolled.

ASSIGNMENT OF ANNUITY, COVENANT AND BOND.

[*grantee*], and in his name, or in the name or names of his executors or administrators, or any of them, to sue and prosecute any action, execution, or extent upon the said judgment; *and* to acknowledge, make, and give full satisfaction, release, or discharge for the same: AND the said [*grantee*] doth hereby for himself, his executors, and administrators, agree to, confirm, and ratify all legal acts, matters, and things whatsoever to be done and accomplished by the said [*purchaser*], his executors, administrators, or assigns, in or about the said judgment and premises. AND THE SAID [*grantee*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*purchaser*], his executors, administrators, and assigns, that the said [*grantee*] hath not at any time heretofore made, done, or committed, or knowingly or willingly permitted or suffered to be done, or been party or privy to the doing of any act, deed, matter or thing whatsoever, whereby or by reason or means whereof the said annuity or yearly sum of pounds, or any part thereof are, is, can, shall, or may be charged, impeached, released, or incumbered, or in any wise affected in title, interest, or otherwise howsoever; *Or* whereby, or by reason or means whereof, the recovery and receipt, by the said [*purchaser*], his executors, administrators, or assigns, of the said annuity or yearly sum of pounds, and of all future payments thereof, or of any part thereof respectively, can be hindered or delayed: AND MOREOVER that he the said [*grantee*], his executors and administrators, and all and every person and persons having or lawfully claiming, or who shall or may have or lawfully claim any right, title, or interest, either at law or in equity, in, to, or out of the said annuity, judgment, and premises hereby assigned or intended so to be, or in, to, or out of any part thereof, by, from, under, or in trust for them, or any of them, shall and will from time to time, and at all times hereafter, at the request, costs, and charges of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other reasonable acts, deeds, assignments, and assurances in the law for the more perfectly and absolutely assigning the said

Covenant by assignor, that he has not released or incumbered.

For further assurance.

ASSIGNMENT OF ANNUITY, COVENANT AND BOND.

annuity, judgment, and premises to the use of the said [*purchaser*], his executors, administrators, and assigns; *And* for the better enabling him and them to recover and receive the said annuity, and all future payments thereof, and every part thereof respectively; *As* by the said [*purchaser*], his executors, administrators, or assigns; or as by his, their, or any of their counsel in the law shall be reasonably devised or advised and required: AND FURTHER, that he the said [*grantee*], his executors or administrators, shall not, nor will at any time hereafter release, vacate, or discharge the said judgment; but shall and will, upon the request, and at the costs and charges in the law of the said [*purchaser*], his executors, administrators, or assigns, do, and execute all such further acts, matters, and things whatsoever for better assigning the said judgment to the said [*purchaser*], his executors, administrators, and assigns; and for better enabling him and them to receive and enjoy to his and their own use and benefit, all sum and sums of money, lands, tenements, and other benefit and advantage to be obtained by, upon, or by virtue of any extent or execution upon the said judgment, *As* by the said [*purchaser*], his executors, administrators, or assigns; or as by his, their, or any of their counsel in the law, shall be reasonably devised or advised and required. AND THE SAID [*purchaser*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*grantee*], his heirs, executors, or administrators, that he the said [*purchaser*], his heirs, executors, and administrators, or some or one of them, shall and will save, defend, keep harmless and indemnified, the said [*grantee*], his heirs, executors, and administrators, and his and their lands, tenements, goods, and chattels, of, from, and against all costs, charges, damages, and expenses whatsoever which can, shall, or may be sustained or incurred; or which may become payable for or by reason or in consequence of any action or suit, or actions or suits, which shall or may be brought or prosecuted in the name or names of the said [*grantee*], his executors or administrators, or any of them, under or by virtue of any power or authority hereby given, or in pursuance hereof to be given to the said [*pur-*

And that assignor has not released judgment; and for further acts to secure benefit thereof to purchaser.

Covenant by purchaser to indemnify vendor from costs, in consequence of his name being used.

chaser], his executors, administrators, or assigns; so as the same do not arise or accrue through the collusion or act of the said [*grantee*], his executors or administrators. IN WITNESS, &c,

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ASSIGNMENT OF ANNUITY, BOND, AND TERM.

ASSIGNMENT *of an* ANNUITY *charged on Lands, and the Annuity* BOND: *and* ASSIGNMENT *of a* TERM *for securing the Annuity to a new Trustee; or* DECLARATION *that the original Trustee shall be possessed of the Lands,* In trust *for securing the Annuity to the Purchaser; with or without the Grantor joining.*

THIS INDENTURE, made the day of , in the year, &c. and in the year of our Lord 18 ; BETWEEN [*vendor*] of, &c. of the first part, [*vendor's trustee*] of, &c. of the second part, (*a*) [*purchaser*] of, &c. of the third part, and [*purchaser's trustee*] of, &c. of the fourth part. WHEREAS by indenture bearing date on or about the day of 18 , and made [or expressed to be made] between [*grantor*] of, &c. of the first part, the said [*vendor*] of the second part, and the said [*trustee*] of the third part; the said [*grantor*], in consideration of the sum of pounds, paid to him by the said [*vendor*], [and which was thereby declared to be the same sum as was mentioned in the condition of the bond hereinafter mentioned,] did give and grant unto the said [*vendor*], his executors, administrators, and assigns, one annuity or rent charge of pounds, to be yearly issuing and payable out of, and charged and chargeable upon, *All those* lands and hereditaments, situate, &c. *To have,* receive, and take the same annual sum or yearly rent charge unto the said [*vendor*], his executors,

Parties.

Recital of grant of annuity.

Habendum.

GRANTOR, A PARTY.

(*a*) *Vide ante,* 341, (*a*). If the grantor be a party, he will be the *third party.*

ASSIGNMENT OF ANNUITY, BOND, AND TERM.

administrators, and assigns, for and during the natural life of him the said [*grantor*], payable half yearly as therein mentioned, with a proportionate part thereof, to and inclusive of the day of the decease of the said [*grantor*], if he should die on any other day than one of the days of payment therein mentioned; *And* with the usual powers of distress and entry, and perception of the rents and profits for recovering and securing the same annuity or rent charge, as therein mentioned: And for more effectually securing the payment of the said annuity or rent charge, the said [*grantor*] thereby (appointed and) demised the said lands and hereditaments unto the said [*trustee*], his executors, administrators, and assigns, for the term of years, upon the trusts, ends, intents, and purposes therein mentioned: And for further and more effectually securing the payment of the said annuity or rent charge, the said [*grantor*], by his bond or writing obligatory, under his hand and seal, and bearing date on or about the said day of 18 , became bound to the said [*vendor*] in the sum of pounds, and the said bond or writing obligatory is conditioned to be void, on the due and regular payment of the said annuity or rent charge: And in the said in part recited indenture there is contained a proviso, enabling the said [*grantor*] to repurchase the said annuity or rent charge of pounds, at the price or sum of pounds, at any time after the day of 18 , on giving (twenty) days notice, and on the other terms therein expressed. And whereas the said [*purchaser*] hath contracted and agreed with the said [*vendor*] for the absolute purchase of the said annuity or rent charge of pounds, for the life of the said [*grantor*], at or for the price or sum of pounds. Now This Indenture Witnesseth, that in pursuance and part performance of the said agreement, and in consideration of the sum of pounds of lawful money of the united kingdom of Great Britain and Ireland, current in Great Britain, to the said [*vendor*], well and truly paid by the said [*purchaser*] at or before the sealing and delivery of these presents, [in full for the absolute purchase of the said annuity or rent charge,] the receipt of which said

With usual powers.

Recital of demise to trustee.

Recital of annuity bond.

Recital of clause for repurchase.

Recital of contract for purchase of annuity.

Testatum.

ASSIGNMENT OF ANNUITY, BOND, AND TERM.

sum of pounds, he the said [*vendor*] doth hereby acknowledge, and of and from the same doth hereby acquit, release, and for ever discharge the said [*purchaser*], his executors, administrators, and assigns, *He* the said [*vendor*] (*b*) *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *doth* bargain, sell, assign, transfer, and set over unto the said [*purchaser*], his executors, administrators, and assigns, ALL THAT the said annuity or rent charge of pounds in and by the said in part recited indenture granted, secured, and made payable unto the said [*vendor*], his executors, administrators, and assigns, as hereinbefore mentioned; (*And* all arrears now due thereon,) *Together* with the same indenture; *And* all benefit and advantage thereof, and of the grant and covenants therein contained: AND all the estate, right, title, interest, trust, property, possession, claim, and demand whatsoever, both at law and in equity of him the said [*vendor*], of, in, to or out of the same annuity and premises, and every or any part thereof. TO HAVE, hold, receive, take, and enjoy the said annuity or rent charge of pounds hereby assigned or otherwise assured or intended so to be, unto the said [*purchaser*], his executors, administrators, and assigns, (henceforth *or*) from the day of last past, for and during the natural life of the said [*grantor*]; [in as full, absolute, and beneficial a manner to all intents and purposes whatsoever, as he the said [*vendor*], or his executors or administrators, could have enjoyed, received, and taken the same, if these presents had not been made;] *Subject nevertheless* to the proviso contained in the said in part recited indenture, enabling the said [*grantor*] to repurchase the said annuity or rent charge, in the manner and on the terms therein mentioned. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, *he* the said [*vendor*] *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *doth* bargain, sell, assign, transfer, and set over unto the said [*purchaser*], his executors,

Assignment of annuity.

All arrears.

Benefit of covenants.

All the estate.

Habendum.

Subject to power of repurchase.

Further testatum.

Assignment of

GRANTOR A PARTY.

(*b*) *Vide ante*, 342, (*b*).

If the original grantor be a party, say,

"and by and with the privity, consent, and approbation of the said [*grantor*], testified by his executing these presents,"

ASSIGNMENT OF ANNUITY, BOND, AND TERM.

administrators, and assigns, THE said bond or writing obligatory, made and entered into by the said [*grantor*] unto to the said [*vendor*] in the penal sum of pounds, for better securing to him the payment of the said annuity or rent charge of pounds hereby assigned or otherwise assured, or intended so to be: *And* all and every sum and sums of money thereby secured or thereupon recoverable; *And* all the benefit and advantage thereof, [AND all the right, title, interest, trust, property, claim and demand whatsoever both at law and in equity of him the said [*vendor*], of, in, to, or out of the same, and every or any part thereof.] TO HAVE, hold, receive, and take the said bond or writing obligatory, and other the premises last hereinbefore mentioned to be hereby assigned unto the said [*purchaser*], his executors, administrators, and assigns, to and for his and their own use and benefit; (*c*) (AND for the purposes aforesaid he the said [*vendor*] hath made, ordained, nominated, constituted and appointed, and by these presents doth make, ordain, nominate, constitute, and appoint the said [*purchaser*], his executors, administrators, and assigns, his true and lawful attorney and attornies irrevocably, for him the said [*vendor*], or in his name, place and stead, to ask, demand, sue for, recover and receive, of and from all and every person and persons whom it doth, shall, or may concern to pay the same, all and every sum and sums of money now due or hereafter to become due and payable on the said bond or writing obligatory, and to reassign or deliver the same to be cancelled; or to act in any other way therein as to him the said [*purchaser*], his executors, administrators, or assigns, shall seem meet; *He* the said [*vendor*] hereby ratifying and confirming, and agreeing to ratify and confirm, all and whatsoever the said [*purchaser*], his executors, administrators, or assigns, shall lawfully do or cause to be done in and about the premises by virtue of these presents; AND one

bond.

And all sums, &c.

All the right, &c.

Habendum.

Power of attorney to receive and recover monies secured by bond.

(*c*) If brevity be particularly desirable, omit the part in parentheses; and instead of it, say,

BREVITY.

"*With* full power and authority for him the said [*purchaser*], his executors, administrators, and assigns, to receive and recover the same."

Power to receive and recover.

ASSIGNMENT OF ANNUITY, BOND, AND TERM.

or more attorney or attornies under him and them from time to time to substitute, depute, and appoint, for the purposes aforesaid.) AND THIS INDENTURE FURTHER WITNESSETH, (*d*) that for the considerations aforesaid, and also in consideration of the sum of five shillings of lawful money current in Great Britain to the said [*old trustee*] in hand paid by the said [*new trustee*] immediately before the execution of these presents, the receipt whereof is hereby acknowledged, *he* the said [*old trustee*], at the request and by the direction of the said [*vendor*], and at the nomination and appointment of the said [*purchaser*], (*e*) respec-

Further testatum.

Assignment by old trustee, by direction of vendor and purchaser,

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OLD TRUSTEE CONTINUED.

(*d*) If the old trustee be continued, instead of assigning the term, say,

Declaration that trustee shall stand possessed of premises, Upon trust, to secure annuity to purchaser.

"*And it is hereby declared and agreed* by and between the said parties to these presents, as far as they are respectively interested; [*and* the said [*trustee*], at the instance and request of the said [*vendor*], doth hereby for himself, his heirs, executors, and administrators, covenant and agree to and with the said [*purchaser*], his executors, administrators, and assigns,] That he the said [*trustee*], his executors, administrators, and assigns, shall and will from time to time, and at all times hereafter during the continuance of the said term of years, stand possessed of and be interested in the said lands and hereditaments, *subject* as aforesaid; UPON THE TRUSTS, and to and for the ends, intents, and purposes expressed, declared, and contained of and concerning the same in and by the said in part recited indenture; *But so nevertheless* that all benefit and advantage of the same trusts in favour of the said [*vendor*], his executors, administrators, and assigns, shall henceforth belong to and be received and enjoyed by the said [*purchaser*], his executors, administrators, and assigns."

In which case add, *covenant by the trustee* that he has not incumbered "the said lands and hereditaments." *Covenants* for title *from the vendor* [as in 350, 1].

GRANTOR A PARTY.

(*e*) If the grantor be a party,

With approbation of grantor.

"and by and with the consent and approbation of the said [*grantor*,]"

ASSIGNMENT OF ANNUITY, BOND, AND TERM.

tively testified by their severally executing these presents, *hath* bargained, sold, assigned, transferred and set over; *And* by these presents *doth* bargain, sell, assign, transfer and set over; *And* the said [*vendor*], at the like nomination and appointment of the said [*purchaser*] *hath* ratified and confirmed; *And* by these presents *doth* ratify and confirm, unto the said [*new trustee*], his executors, administrators, and assigns, ALL THOSE the said lands and hereditaments [in and by the said recited indenture demised unto the said [*old trustee*], his executors, administrators, and assigns, for the term of years, upon the trusts, and for the purposes therein and hereinbefore mentioned], and every part and parcel thereof, with their appurtenances: AND all the estate, right, title, interest, term and terms for years, property, claim, and demand whatsoever of them the said [*old trustee*] and [*vendor*], or either of them, of, in, to, or out of the same lands and hereditaments, and every part and parcel thereof [under or by virtue of the said in part recited indenture, or otherwise howsoever]. TO HAVE AND TO HOLD the said lands and hereditaments, and all and singular other the premises hereby assigned or otherwise assured or intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said [*new trustee*], his executors, administrators, and assigns, henceforth for and during all the residue and remainder of the said term of years now to come and unexpired; *Subject* nevertheless to the rent by the said recited indenture reserved; *And upon the trusts*, and to and for the ends, intents, and purposes therein declared and contained; *But so nevertheless* that all benefit and advantage of the same trusts in favour of the said [*vendor*], his executors, administrators, and assigns, shall henceforth belong to and be received and enjoyed by the said [*purchaser*], his executors, administrators, and assigns. AND THE SAID [*old trustee*], for himself, his heirs, executors, and administrators, doth covenant and declare to and with the said [*new trustee*], his executors, administrators, and assigns, by these presents, that he the said [*old trustee*] hath not at any time heretofore made, done, executed, committed, or knowingly or willingly suffered any act, matter or thing whatsoever whereby or wherewith, or by

and confirmation by vendor,

to new trustee, of

Parcels.

All the estate.

Habendum.

to new trustee for remainder of term.

Subject to nominal rent.

Upon the trusts contained in the grant.

But the trusts to be in favor of purchaser.

Covenant by old trustee that he has not incumbered.

ASSIGNMENT OF ANNUITY, BOND, AND TERM.

reason or means whereof, the said lands and hereditaments [hereby assigned or otherwise assured, or intended so to be,] or the said term of years therein, or any part thereof respectively are, is, can, shall, or may be impeached, charged, incumbered, or in any way affected.

Covenant by vendor against his own acts, that annuity, bond, and lease, are valid and subsisting.

AND THE SAID [*vendor*], for himself, his heirs, executors, and administrators, doth covenant, promise, and agree with and to the said [*purchaser*], his executors, administrators, and assigns [by these presents in manner following, that is to say]; That for and notwithstanding any act, deed, matter, or thing by him the said [*vendor*] had, made, done, committed, or knowingly suffered to the contrary, the said annuity or rent charge of , and also the said bond or writing obligatory hereby assigned [or otherwise assured, or intended so to be] respectively, are, and each of them is at the time of the sealing and delivery of these presents, subsisting and good, and valid both at law and in equity: AND ALSO that the said demise is good, effectual, and valid in the law of and for the premises hereby assigned [or otherwise assured or intended so to be] and in nowise surrendered, forfeited, or become void or voidable: AND

That vendor and trustee have good right to convey.

THAT (*f*) they the said [*old trustee*] and [*vendor*], or one of them, for and notwithstanding any such act, matter, or thing as aforesaid, now have or hath in themselves or himself good rightful power, and lawful and absolute authority, to bargain, sell, assign, transfer, and set over the said lands and hereditaments [hereby assigned or otherwise assured or intended so to be], with their appurtenances, unto the said [*new trustee*], his executors, administrators, and assigns, [for the residue and remainder now to come, and unexpired of the said term of years and] in manner and form aforesaid [and according to the true intent and meaning of these presents]: AND ALSO that for and notwithstanding any such act, deed, matter, or thing as aforesaid, he the said [*vendor*] [at the time of the sealing and delivery of these presents] hath good right, full power, and lawful and absolute authority to bargain, sell, assign, and transfer the said annuity or rent charge; *and also* the

That vendor has good right to assign annuity and bond.

(*f*) This covenant should be omitted when the premises are not assigned to a new trustee.

said bond or writing obligatory [hereby assigned or otherwise assured or intended so to be respectively] unto the said [*purchaser*], his executors, administrators, and assigns, in manner and form aforesaid [and according to the true intent and meaning of these presents]: AND FURTHER, that it shall and may be lawful to and for the said [*purchaser*], his executors, administrators, and assigns, from time to time, and at all times hereafter, peaceably and quietly to have, hold, and enjoy, receive, and take the said annuity or rent charge, and the securities for the same [hereby respectively assigned or otherwise assured or intended so to be,] to and for their and his own use and benefit for and during the natural life of the said [*grantor*], *subject* as aforesaid, without any suit, trouble, molestation, eviction, disturbance, hindrance, or interruption, of or by him the said [*vendor*], his executors or administrators, or of or by any other person or persons lawfully claiming or to claim from, by, or under him, them, or any of them, or by his, their, or any or either of their acts, means, consent, neglect, default, privity, or procurement: [AND free and clear, and freely, clearly, and absolutely acquitted, exonerated, and discharged or otherwise by him the said [*vendor*], his executors or administrators, well and sufficiently protected, defended, saved harmless, and kept indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, leases, assignments, surrenders, forfeitures, rents, arrears of rent, rates, taxes, and assessments, and of and from all other estates, titles, troubles, charges, and incumbrances whatsoever, at any time or times heretofore made, and to be at any time, and from time to time hereafter had, made, done, committed, or knowingly suffered by him the said [*vendor*], or any person or persons lawfully or equitably claiming, or to claim by, from, through, with, or under his act, deed, means, consent, privity, neglect, default, or procurement:] AND FURTHER, that he the said [*vendor*], his executors and administrators, and all and every other persons and person lawfully having or claiming, or to claim any estate, right, title, or interest, of, in, to, or out of the said annuity or rent charge, and securities hereby assigned [or otherwise assured or intended so to be] respectively, or any part thereof by, from, or

ASSIGNMENT OF ANNUITY, BOND, AND TERM.

For peaceable enjoyment.

Free from incumbrances.

And for further assurance.

ASSIGNMENT OF ANNUITY, BOND AND TERM.

under him or them, shall and will from time to time and at all times hereafter, at the reasonable request, and at the proper costs and charges in the law of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute all and every such further and other lawful and reasonable acts, deeds, assignments, and assurances in the law whatsoever, for further, better, more perfectly, lawfully and absolutely, or satisfactorily, assigning, confirming, and assuring the said annuity or rent charge and securities, hereby assigned [or otherwise assured, or intended so to be] respectively, and every part and parcel of the same, with their and every of their appurtenances, unto the said [*purchaser*], his executors, administrators, and assigns, for and during the natural life of the said [*grantor*], subject as aforesaid, *As* by the said [*purchaser*], his executors, administrators or assigns, or his or their counsel in the law, shall be reasonably devised, advised, or required and tendered to be made, done, and executed; [*So* as such further assurances, assignments, or conveyances contain or extend to no further or other covenant than against the person or persons making the same; *And so* as the person or persons who shall be required to make the same be not compelled or compellable to go or travel from their respective places of abode for the doing thereof.] AND THE SAID [*purchaser*], for himself, his heirs, executors, and administrators, doth covenant, promise, and agree with and to the said [*vendor*], his executors and administrators, by these presents, that he the said [*purchaser*], his heirs, executors, or administrators, shall and will at all times indemnify the said [*vendor*], his executors and administrators, of, from, and against all costs, charges, expenses, damages, and demands which he, they, or any of them shall pay, sustain, or be put unto, for, or by reason, or on account of any proceedings to be had at law or in equity by virtue or means of these presents, or of any power or authority herein contained; *So* as the same do not arise or accrue through the collusion or act of the said [*vendor*], his executors or administrators. IN WITNESS, &c.

Covenant by purchaser to indemnify vendor for costs in consequence of using his name.

ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

ASSIGNMENT *of an* ANNUITY, *and a* BOND, WARRANT OF ATTORNEY, *and* JUDGMENT; *either with or without an* ASSIGNMENT *of a* POLICY OF INSURANCE; *and* ASSIGNMENT *of a* TERM *for securing the Annuity, to a new Trustee; in which the Grantor joins.*

THIS INDENTURE, made the day of in the year of the reign, &c. George the fourth, &c. and in the year of our Lord 18 ; BETWEEN [*grantee of annuity*] of, &c. of the first part, [*old trustee of term*] of, &c. of the second part, [*grantor* (*a*) *of annuity*] of, &c. of the third part, [*purchaser*] of, &c. of the fourth part, [*new trustee of term*] of, &c. of the fifth part. WHEREAS, by an indenture bearing date the day of 18 , and made, or expressed to be made, between the said [*grantor*] of the first part, the said [*grantee*] of the second part, and the said [*old trustee*] of the third part, *In consideration* of the sum of thousand pounds, paid by ([*agent*] of, &c. as agent (*b*) for) the said [*grantee*] to the said [*grantor*], being the same sum as was mentioned in the condition of the bond hereinafter mentioned; he the said [*grantor*] did give, grant, and confirm unto the said [*grantee*], his executors, administrators, and assigns, *One* clear annual sum or yearly rent charge of hundred and pounds, for the term of (ninety-nine) years, If the said [*grantor*] should so long live, to be issuing and payable out of all the manors or lordships, capital and other messuages, farms, lands, tenements, cottages, and hereditaments thereinafter mentioned, to be thereby demised; and every part thereof; and to be paid by four equal quarterly payments, on the day of

Parties.

Recital—of grant of annuity for 99 years, if grantor so long live.

(*a*) *Vide ante*, 341, (*a*).

(*b*) This is not necessary under the new annuity act, *vide ante*, 335. [It was necessary under the 17 Geo. III. c. 26. s. 4. which it must be remembered is still in force as to annuities granted before the 14th July, 1813. And see *Mason* v. *Phillips*, 5 M. & S. 369. and *post*, 485. *Ed.*]

ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

the day of , the day of , and the day of , without any deduction whatsoever (the tax or duty on income or property only excepted); and a proportional part of the said annual sum or yearly rent charge of hundred and pounds up to, and inclusive of the day of the decease of the said [*grantor*]: *And* by the said indenture now in recital, the said [*grantor*] did grant unto the said [*grantee*], his executors, administrators, and assigns, the usual powers and remedies of distress and entry, and detention of possession and perception of rents and profits, in case the said annual sum or yearly rent charge of hundred and pounds, or any part thereof, should be in arrear: *And* by the said indenture now in recital, the said [*grantor*] did covenant with the said [*grantee*], his executors, administrators, and assigns, for the regular payment of the said annual sum or yearly rent charge of hundred and pounds: *and* by the said indenture now in recital, the said [*grantor*], for the considerations aforesaid, and in consideration of five shillings to him paid by the said [*old trustee*], did grant, bargain, sell, and demise, unto the said [*old trustee*], his executors, administrators, and assigns, the manors or lordships, capital and other messuages, farms, lands, tenements, cottages, and hereditaments therein particularly mentioned and described, situate in the counties of and , with their rights, royalties, members, and appurtenances: *To hold* the same unto the said [*old trustee*], his executors, administrators, and assigns, from the day next before the day of the date of the said indenture now in recital, for the term of (ninety-nine years) if the said [*grantor*] should so long live, *Upon* and for the trusts, intents, and purposes therein declared or expressed of or concerning the same, for better securing the payment of the said annual sum or yearly rent charge: *and* in the said indenture now in recital is contained a proviso for enabling the said [*grantor*] to repurchase the said annual sum or yearly rent charge of hundred and pounds, upon the terms therein mentioned (*c*). AND WHEREAS the said annual sum or

With usual powers of distress and entry.

Covenant for payment.

Demise for better securing annuity.

Proviso for repurchasing annuity.

Reference to bond.

(*c*) If there are covenants respecting insurance, say,

POLICY OF INSURANCE. Recital of co-

"*And by the said indenture now in recital* the said

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yearly rent charge is further secured by the bond of the said [*grantor*] in the penal sum of thousand hundred pounds, and bearing even date with the said in part recited indenture, and conditioned to be void on the due and regular payment of the said annuity: AND WHEREAS the said annual sum or yearly rent charge is further secured by a judgment confessed by virtue of a warrant of attorney from the said [*grantor*] for that purpose. AND WHERRAS the said several recited securities have been duly memorialised and enrolled in the High Court of Chancery, according to the

Reference to judgment.

Recital of enrolment.

[*grantor*] further covenanted with the said [*grantee*], his executors, administrators, and assigns, that he would from time to time, at his own expense, when required, attend personally at any of the offices of insurance in London or Westminster, or send such vouchers of his residence, and state of health, as any such offices should require, in order that his life might be insured and kept insured; *and* upon his leaving, or intending to leave Great Britain, or doing any other act whereby an increased premium would become payable on any policy on which his life might be insured, give notice thereof in writing to the said [*grantee*], his executors, administrators, and assigns, one calendar month at least before doing any such act, in order to prevent any such policy from being avoidable; and would in case of his doing any such act, or giving notice of his intention to do the same, pay unto the said [*grantee*], his executors, administrators, and assigns, the additional premium which might be demanded at any of the said insurance offices, for insuring any sum not exceeding pounds on the life of the said [*grantor*], in consequence thereof. AND WHEREAS the said [*grantee*] hath effected with the (Albion) insurance company an assurance on the life of the said [*grantor*], for the sum of thousand pounds; *and* that sum is for the annual premium of pounds assured to be paid to the said [*grantee*], his executors, administrators, and assigns, on the decease of the said [*grantor*], by a policy of assurance under the hands and seals of some of the directors of that company, bearing date the day of 182 ."

Covenant of grantor to appear, &c. in order that his life may be insured.

And to give notice of leaving the kingdom, &c.

And to pay additional premium in consequence thereof.

Recital of effecting insurance on grantor's life.

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act of parliament for that purpose made and provided (*d*).

(*d*) By the 17 Geo. 3, c. 26, which is still in force, so far as regards any annuities or rent charges which were granted before the passing of the last annuity act, it is enacted, sec. 1. "That a memorial of every deed, bond, instrument, or other assurance, whereby any annuity or rent charge shall, from and after the passing of this act, be granted for one or more life or lives, or for any term of years or greater estate, determinable on one or more life or lives, shall, within *twenty* (by the new act it is *thirty*) days of the execution of such deed, bond, instrument, or other assurance, be inrolled in the High Court of Chancery; and that every such memorial shall contain the day of the month and the year when the deed, bond, instrument, or other assurance, bears date, and the name of all the parties, and for whom any of them are trustees, and of all the witnesses; and shall set forth the annual sum or sums to be paid, and the name of the person or persons for whose life or lives the annuity is granted, and the consideration or considerations of granting the same, otherwise every such deed, bond, instrument, or other assurance, shall be null and void to all intents and purposes." But by sec. VIII, that act does not "extend to any annuity or rent charge given by will or by marriage settlement, or for the advancement of a child, nor to any annuity or rent charge secured upon lands * of equal or greater annual value, whereof the grantor was seised in fee simple or in fee tail in possession at the time of the grant, or secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said annuity, nor to any voluntary annuity granted without regard to pecuniary consideration; nor to any annuity or rent charge granted by any body corporate, or under any authority or trust created by act of parliament; nor to any annuity, where the sum to be paid does not exceed ten pounds annually, unless there be more than one such last mentioned annuity from the same grantor or grantors to or in trust for the same person or persons." [And see, *Keats* v. *Hich*, 5 J. B. Moore, 629. 4 B. & C. 69, and *post*, 495. *Doe* v. *Phillips*, 1 Taunt. 356.]

Memorial, &c. under 17 Geo. 3. c. 26.

To what annuities the old act does not extend.

See sec. II, of the new annuity act, *ante*, 330.

If the provisions of these acts have not been complied with, the annuity may be set aside; therefore the solicitor for the purchaser should

Solicitor should ascertain that memorial has been duly inrolled.

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* [Where a surety on an annuity deed charged his own freehold estate, of greater value than the annuity, with a trust to pay the annuity if in arrear, it was held, that he was a grantor within this exception, and that no memorial was required. *Darwin* v. *Lincoln*, 5 B. & A. 444. This case is equally applicable to sec. X of the new act. *Ed.*]

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invariably ascertain whether these things have been done, before the purchase is completed.

Fees for certificate and search.

Under the old act, sec. V. the fees for every certificate and copy given of the memorial enrolled, if the same do not exceed two hundred words, are one shilling; but if the memorial exceed two hundred words, then after the rate and proportion of sixpence for every one hundred words; and the fee of one shilling for every search in the office, and no more.

See sec. VII. of the new act, *ante*, 333.

On annuity being vacated, the consideration money may be recovered back in certain cases.

If an annuity be vacated through a defect in the memorial, and not for any fraud, the consideration money may be recovered back, because it is against conscience that the party should retain it. *Shove* v. *Webb*, 1 Durnf. & East, 732. Where a judgment entered up to secure an annuity was set aside, the party brought *assumpsit* for money had and received, and produced the annuity deed as evidence of the consideration; it was held, that although the deed upon the face of it did not appear to be void, yet upon proving the rule to set aside the judgment, and to deliver up the warrant of attorney to be cancelled, the plaintiff might recover, since one of the securities having failed the whole transaction fails,* and the consideration money becomes had and received to the plaintiff's use, *Scurfield* v. *Gowland*, 6 East, 241. 2 Smith, 332. S. C. [*Davis* v. *D.* of *Marlborough*, 2 Swanst. 166.] That the price paid for annuity void from a defective memorial, may be recovered back by action for money had and received, it is not necessary that the annuity should be formally set aside; but only that the grantee should have expressed his dissent; which is sufficiently done where both parties agree that the annuity is void, and treat for abrogating it, after which no further payment is made. *Waters* v. *Mansell*, 3 Taunt. 56. Where the grantee of an annuity set aside for a defective registry, brings an action for money had and received, to recover back the consideration money paid for it, the grantor may set off the payments, made in respect of such annuity, though for more than six years, unless the plaintiff reply the statute of limitations. *Hicks* v. *Hicks*, 3 East, 12. In some few instances, where an annuity has been set aside, the parties have consented to a reference to the prothonotary of the court, to compute what was due for principal and interest, in doing which the practice was to allow the principal with five per cent. interest, the grantee accounting for the whole of the money received by him in respect of such annuity. This mode may, perhaps, in some cases be preferable to resorting to legal proceedings. Blaney, 81. [This course was adopted in *Mence* v. *Hammond*, 6 J. B. Moore, 490, which see. And see vol. II, 326, where this subject is more fully discussed, 460 & 523, *post*,]

Parties sometimes consent to reference to prothonotary.

As to the liability of a surety for payment of an annuity, *Vide infra*, [471 *a*.]

* [As to this, see 336, *ante*. *Ed*.]

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AND WHEREAS there is now due and owing for the arrears of the said annuity or yearly rent charge of pounds, up to the day of the date of these presents, the sum of pounds and no more, as the said [*grantor*] and [*grantee*] do hereby respectively acknowledge and declare.

Recital of arrears due.

Recital of contract for purchase

AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*grantee*], for the absolute purchase of the said annuity or yearly rent charge of pounds, together with all the arrears thereof, at or for the price or sum of thousand hundred pounds, *Subject* to the right of the said [*grantor*] to repurchase the same under the provisions of the said bond, and a clause or proviso to the like effect in the said in part recited indenture contained.

Subject to repurchase.

Testatum.

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for and in consideration of the sum of thousand hundred pounds of lawful money of Great Britain [and Ireland], at or immediately before the sealing and delivering of these presents to the said [*grantee*] in hand well and truly paid by the said [*purchaser*], the receipt whereof he the said [*grantee*] doth hereby admit and acknowledge, and of and from the same and every part thereof doth hereby acquit,

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Grantee cannot claim premiums for insuring life.

Annuity granted by *feme covert*, and set aside, cannot be recovered out of her separate estate.

Resignation of business, the consideration for an annuity set aside cannot be restored.

Annuity in consideration of resigning business need not be registered.

But where a life annuity is set aside, the grantee cannot claim from the grantor premiums paid for insuring his life, unless it was expressly agreed that the grantor should pay them. *Burdon* v. *Browning*, 1 Taunt. 520. So on an annuity granted by a *feme covert*, charged upon her separate estate, being void under the statute, for want of the proper requisites in the momorial, the consideration cannot be recovered out of her separate estate; although part of the money was applied in paying fines upon her admission to copyholds, being part of her separate estate. *Jones* v. *Harris*, 9 Ves. 486. Nor can the court on setting aside an annuity, order a business to be restored, the relinquishment of which was the consideration for granting the annuity; *dictum*, *Crespigny* v. *Wittenoom*, 4 Durnf. & East, 793: in which case it was held, that if an annuity be granted in consideration of the grantee's giving up his business to the grantor, it need not be registered under the 17 Geo. III. c. 26. [Nor need it be registered under the new act. See 336, *ante*, and 494, *post*. But where an account is set aside, the accountant has no lien on the estate attempted to be charged, for the price of the annuity. *Davis* v. *Duke of Marlborough*, 2 Wils. Ch. Rep. 152. *Ed.*]

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release, and for ever discharge the said [*purchaser*], his executors, administrators, and assigns, *he* the said [*grantee*] *hath* bargained, sold, and assigned, *And* by these presents *doth* bargain, sell, and assign, unto the said [*purchaser*], his executors, administrators, and assigns, ALL THAT the said annuity or yearly rent charge of pounds, secured or intended to be secured by the said in part recited indenture, bond, warrant of attorney, and judgment respectively; *And* all arrears and future payments thereof; *Together* with the said in part recited indenture, bond, warrant of attorney, and judgment (*e*), and all and every sum and sums of money to be had or received by virtue thereof respectively; and the full benefit and advantage of all the securities whatsoever, made and given for securing the payment of the said annuity or yearly rent charge, monies, and premises. AND all the estate, right, title, interest, trust, property, claim, and demand whatsoever, both at law and in equity, or otherwise howsoever, of him the said [*grantee*], of, in, to, or out of the same premises, and every or any part thereof. TO HAVE, hold, receive, take, and enjoy the said annuity or yearly rent charge of pounds, and the securities, monies, and premises hereby assigned or otherwise assured, or intended so to be, and every part thereof, *Subject* to such right of repurchase as aforesaid, unto the said [*purchaser*], his executors, administrators, and assigns, henceforth, for and during all the residue and remainder now to come and unexpired of the said term of (ninety-nine) years determinable as aforesaid. AND for the considerations aforesaid, and for the better enabling the said [*purchaser*], his executors, administrators, and assigns, to recover and receive the said annuity or yearly rent charge of pounds, and other the monies and premises, hereby assigned or otherwise assured, or intended so to be as aforesaid, and to release and discharge the same, or the said in part recited securities, or any of them, *he* the said [*grantee*] hath made, nominated, constituted, and appointed, *And* by these presents doth make, nominate, constitute, and appoint the said [*purchaser*], his executors, administrators, and assigns, his

Assignment of annuity.

and all arrears, with the securities,

and benefit thereof.

All the estate.

Habendum.

Power of attorney to receive and recover annuity.

(*e*) If there be a policy of insurance, add, "policy of insurance, additional premium,"

POLICY OF INSURANCE.

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true and lawful attorney and attornies, irrevocably in the name of him the said [*grantee*], his executors or administrators, to ask, demand, sue for, recover, and receive, the said annuity or yearly rent charge of pounds, and the arrears and future payments thereof, and all and every or any other sum or sums of money due or to become due, under the said in part recited securities, or any of them, and every or any part or parts thereof respectively, of and from the person or persons liable to pay the same respectively; *And* in default of the payment thereof, or of any part thereof respectively, to bring, commence, sue forth, and prosecute any action or actions, suit or suits; or to use such other ways and means for compelling or enforcing the payment of the same respectively, as to the said [*purchaser*], his executors, administrators, or assigns, shall seem meet; *And* upon the receipt of the said annuity or yearly rent charge of pounds, or the arrears thereof, or other sum or sums of money hereby assigned or otherwise assured, or intended so to be, or any part or parts thereof respectively, to sign, seal, deliver, and give, one or more receipt or receipts, acquittance or acquittances, or other discharge or discharges for the same; *And also* upon the repurchase of the said annuity or yearly rent charge of pounds, or upon any other occasion, to release the said judgment, or to enter satisfaction for the same upon the record thereof; *Or* to do any other acts or things for avoiding or releasing the said annuity or yearly rent charge of pounds, and all or any of the securities hereby assigned, or otherwise assured or intended so to be: *And* for all or any of the purposes aforesaid to use the name or names of the said [*grantee*], his executors or administrators: *And* for all or any of the purposes aforesaid, from time to time to nominate and appoint, one or more attorney or attorneys, under him the said [*purchaser*], his executors, administrators, or assigns; and to revoke, alter, and vary such nomination and appointment at his and their pleasure; *And generally* to do and perform all such other acts, deeds, matters, and things, in and about the premises, as fully and effectually to all intents and purposes, as he the said [*grantee*], his executors or administrators, might or could do if personally present and acting therein; he the said [*grantee*], hereby ratifying and con-

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firming, and agreeing to ratify and confirm, all and whatsoever the said [*purchaser*], his executors, administrators, or assigns, or his or their substitute or substitutes, shall lawfully do or cause to be done in or about the premises by virtue of these presents. PROVIDED ALWAYS *nevertheless, and it is hereby declared,* between and by all the parties hereto, and particularly the said [*purchaser*], doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*grantee*], his executors and administrators, That he the said [*purchaser*], his heirs, executors, administrators, or assigns, shall and will from time to time, and at all times hereafter, pay unto, and in the mean time save harmless and keep indemnified the said [*grantee*], his executors and administrators, of, from, and against all costs, charges, and expenses, which he or they shall or may be put unto, bear, pay, or sustain, for or by reason, or on accout of the name or names of the said [*grantee*], his executors or administrators, being used in any action, suit, or other proceeding which may be brought, commenced, or prosecuted, by virtue of the power hereinbefore for that purpose contained. AND THE SAID [*grantee*] doth hereby for himself, his heirs, executors, and administrators, covenant and declare with and to the said [*purchaser*], his executors, administrators, and assigns, That the said annuity or yearly rent charge of pounds is now, at the time of the execution of these presents, good, valid, and subsisting, for the said term of (ninety-nine) years, determinable as aforesaid: AND that the same annuity, and also the said recited securities, are still in force: AND that the same annuity hath not been repurchased, and that the same securities or any of them, have not nor hath been released, vacated, avoided, or determined: AND that he the said [*grantee*], now hath in himself good right, full power, and lawful and absolute authority, to grant or assign the said annuity or yearly rent charge of pounds, and the securities, monies, and premises hereby assigned or otherwise assured, or intended so to be, unto the said [*purchaser*], his executors, administrators, and assigns, according to the true intent and meaning of these presents: AND that he the said [*grantee*], his executors or administrators, shall

Covenant to indemnify vendor from costs, &c. in consequence of his name being used.

Covenants by vendor, that annuity and securities are

subsisting and in force;

and not been repurchased or released.

For title.

Not to revoke powers.

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not, nor will at any time hereafter, without the consent in writing of the said [*purchaser*], his executors, administrators, or assigns, or the order or decree of some court of law or equity, alter, revoke, or annul, all or any of the powers or authorities hereinbefore contained, and given to the said [*purchaser*], his executors, administrators, and assigns: AND that it shall or may be lawful to or for the said [*purchaser*], his executors, administrators, and assigns, to receive and take the said annuity or yearly rent charge of pounds, and other the monies hereby assigned or otherwise assured, or intended so to be, when and as the same shall become due and payable, without any let, suit, or interruption whatsoever, of, from, or by him the said [*grantee*], his executors or administrators; *And* free and clear of and from all charges and incumbrances whatsoever made, done, and committed, or to be made, done, and committed by him the said [*grantee*], his executors or administrators: AND moreover, that he the said [*grantee*], his executors and administrators, and all persons rightfully claiming and to claim by, from, under, or in trust for him or them, shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said [*purchaser*], his executors or administrators, make, do, and execute, or cause or procure to be made, done, and executed, All such further and other lawful and reasonable acts, deeds, assignments, powers, authorities, and other assurances whatsoever, for further, better, more perfectly, lawfully, and absolutely or satisfactorily assigning or assuring unto or vesting in the said [*purchaser*], his executors, administrators, and assigns, the said annuity or yearly rent charge of pounds, and other the monies hereby assigned or otherwise assured, or intended so to be, and the securities for the same respectively; *and also* authorising or empowering him or them to receive and obtain payment of the same annuity and monies, *As* by the said [*purchaser*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised or advised and required, and be tendered to be made, done, and executed. AND THIS INDENTURE ALSO WITNESSETH (*f*) that

For peaceable enjoyment.

free from incumbrances.

And for further assurance.

Further testatum.

OLD TRUSTEE CONTINUED.

(*f*) If the old trustee be continued, *vide ante*, 349.

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in consideration of the premises, and for and in consideration of the sum of ten shillings of lawful money of Great Britain [and Ireland], to the said [*trustee*] paid by the said [*new trustee*], at, or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged), *he* the said [*trustee*], at the request and by the direction of the said [*grantee*], and upon the nomination and appointment of the said [*purchaser*], testified as hereinbefore is mentioned, *hath* bargained, sold, assigned, transferred, and set over, *And* by these presents *doth* bargain, sell, assign, transfer, and set over unto the said [*new trustee*], his executors, administrators, and assigns, ALL and singular the hereditaments and premises, which in and by the hereinbefore in part recited indenture were demised by the said [*grantor*] to the said [*trustee*], for the term of (ninety-nine) years, as therein and hereinbefore mentioned, or were expressed and intended so to be, with the appurtenances: AND all the estate, right, title, interest, term and terms for years, property, claim, and demand whatsoever, of him the said [*old trustee*], of, in, to, or out of the same hereditaments and premises, and every or any part thereof. TO HAVE AND TO HOLD the said hereditaments, and all and singular other the premises lastly hereinbefore assigned, or expressed and intended so to be, with their appurtenances, unto the said [*new trustee*], his executors, administrators, and assigns, henceforth, for and during all the rest, residue, and remainder now to come and unexpired of the said term of (ninety-nine) years, determinable as aforesaid; NEVERTHELESS upon and for the trusts, intents, and purposes, in and by the said in part recited indenture expressed or declared of or concerning the same; *But so nevertheless*, that all the benefit and advantage of the same trusts by the same indenture declared or intended in favour of the said [*grantee*], his executors, administrators, and assigns, shall belong to and be received and enjoyed by the said [*purchaser*], his executors, administrators, and assigns. (*Add covenant by the old trustee* that he has not incumbered, *ut ante*, 350.) IN WITNESS, &c.

Assignment by old trustee, by direction and appointment of vendor and purchaser, to new trustee, of

Parcels.

All the estate.

Habendum to new trustee for residue of term.

Upon trusts for securing annuity to purchaser.

Covenant by old trustee that he has not incumbered.

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

ASSIGNMENT *of an* ANNUITY, *for the Lives of two Nominees, secured by* BOND, *and* WARRANT OF ATTORNEY *upon which* JUDGMENT *has been entered, and* COVENANT *to surrender* COPYHOLDS; *subject to the Grantor's Right to repurchase; either by the Grantee, or by his Executors or Administrators, or by specific or residuary Legatees with the Assent of the Executor, or by the next of Kin, upon an Intestacy, with the Assent of the Administrator; and either where the Copyholds not having been previously surrendered, the Grantee directs, or his Executors or Administrators, or the Persons beneficially interested in the Annuity, with the Assent of the Executor or Administrator direct, the Grantor to surrender to the Purchaser; or where the Copyholds having been previously surrendered, and the Grantee admitted, he, or his Heir, by the Direction of the Persons beneficially interested, covenants to surrender to the Purchaser;* DECLARATION *of Trust by the Purchaser; and* DECLARATION *by the Grantee, or Executor,* &c. *that the Surrender to be made shall be in satisfaction of the Grantor's Covenant.*

COPYHOLDS TO BE SURRENDERED TO PURCHASER.

DECLARATION.

THIS INDENTURE, made the day of in the year, &c. and in the year of our Lord one thousand eight hundred and ; BETWEEN [*grantee*] (*a*), late of , in the county of

Parties.

BY EXECUTOR ALONE.

(*a*) If the sale be made by the executor or administrator of the grantee, and the surrender of the copyhold has not been made by the

[*description*], and now of , in the county of , [*description*], of the one part, and [*purchaser*] of Street , in the county of , [*description*], of the other part. WHEREAS [*grantor*] of , in the county of , Esquire, formerly called only, by his bond or obligation in writing bearing date on or about the day of in the year of our Lord one thousand eight hundred and , became bound to the said [*grantee*], his executors, administrators, and assigns, in the penal sum of hundred pounds; *With a condition* thereunder written for making the same void, if the said [*grantor, present name in this place, and also when mentioned afterwards*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural lives of [*nominee*] of , in the county of , and [*other nominee*], of , in the same county, brothers of the said [*grantor*], and the life of the survivor of them, *One* annuity or yearly sum of pounds free from taxes, and clear of all deductions whatsoever, on four days or times in the year, that is to say; the day of , the day of , the day of , and the day of in every year, by even and equal portions; the first payment thereof to begin and be made on the day of then next ensuing and now past; with the whole or a just proportion of the last quarterly payment, in case of the death of the survivor of them, the said [*nominees*] on, or previous to any quarterly day of payment as therein mentioned. AND WHEREAS by a certain deed poll, or warrant

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

Recital of bond for securing annuity.

Condition.

Lives.

Annuity.

Days of payment.

Recital of warrant of attor-

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grantor, the executor or administrator should be the first party, and the purchaser the other party; but if in that case the surrender has been made, the heir of the grantee should be the second party, and the purchaser the third party. If the sale be made by the persons beneficially interested in the purchase money, they should be the first parties, the executor or administrator the second party, the heir, if he be a necessary party, the third party, and the purchaser the fourth party.

HEIR OF GRANTEE A PARTY.

BY PERSONS BENEFICIALLY INTERESTED, AND EXECUTOR, &c.

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

of attorney under the hand and seal of the said [*grantor*], bearing even date with the said recited bond or obligation, he the said [*grantor*] did authorise and empower [A. B.] and [C. D.], attornies of His Majesty's Court of Common Pleas at Westminster, or either of them, or any other attorney of the same court, to confess a judgment against him the said [*grantor*], in the said Court of Common Pleas, at the suit of the said [*grantee*], in an action of debt upon the said bond, for the sum of hundred pounds and costs of suit. AND WHEREAS by a certain indenture, also bearing even date with the said recited bond or obligation, and made or expressed to be made between the said [*grantor*] of the one part, and the said [*grantee*] of the other part, *After reciting* or taking notice therein amongst other things of the said bond and warrant of attorney, as or to the effect hereinbefore recited, *It is witnessed*, that in consideration of the sum of hundred pounds by the said [*grantee*], (by (*b*) the hands of [*agent*] of Street, London, [*description*], his agent) to the said [*grantor*] in hand paid at the time of the sealing and delivery thereof, the said [*grantor*] did thereby for himself, his heirs, executors, and administrators, covenant with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], should and would immediately after the execution of the said indenture, at the proper costs and charges of him the said [*grantor*], surrender into the hands of the lord or lords, lady or ladies, of the manor of in the county of , for the time being, according to the custom of the said manor, *All those*, &c. with their rights, members, privileges, and appurtenances, and all other the lands, tenements, and hereditaments whatsoever, of him the said [*grantor*], holden of the said manor by copy of court roll, *To the use* of the said [*grantee*], his heirs and assigns, *Upon the condition* that if the said [*grantor*], his heirs, executors, or administrators, did well

ney to confess judgment upon bond.

Recital of covenant to surrender copyholds of inheritance.

Parcels.

Use.

Condition.

(*b*) The annuity assigned by this form is supposed to have been granted under the old annuity act, by which this was necessary; but it is not necessary under the new act. *Vide ante*, 335. [354. 357.]

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and truly pay the said annuity or yearly sum of pounds, in manner and form in the said recited bond mentioned and appointed for payment thereof, then the said surrender should be void: and *Upon the trusts* for the perception of the rents, issues, and profits, or for the sale or mortgage of the said hereditaments and premises, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements thereinafter mentioned, expressed, and declared, of and concerning the same, for better securing the due and regular payment of the said annuity unto the said [*grantee*], his executors, administrators, and assigns; and subject thereto, *In trust* for the said [*grantor*], his heirs and assigns: And in which said indenture is contained a covenant from the said [*grantor*] for payment of the said annuity or yearly sum of pounds, and such proportional part thereof as aforesaid, at the days or times, and in manner and form appointed for that purpose by the condition of the said recited bond or obligation as aforesaid; *And also* covenants for the title, peaceable enjoyment, and further assurance, of the said copyhold premises; *And likewise* a proviso, covenant, and agreement, that when and as often as the said annuity, or any part thereof, or such proportional part thereof as aforesaid, should be behind and unpaid by the space of twenty-one days, Then and so often, and in any such case, it should and might be lawful to and for the said [*grantee*], his executors, administrators, and assigns, to sue out such execution or executions upon or by virtue of the said judgment, as he or they should think fit, or be advised, for the recovery of the arrears of the said annuity, and all costs and charges which the said [*grantee*], his executors, administrators, or assigns, should bear, pay, sustain, or be put unto by reason of the non payment thereof; *And* that it should not be necessary for the said [*grantee*], his executors, administrators, or assigns, to revive or cause the said judgment to be revived, or to do any thing to keep the same on foot, notwithstanding the same should have been entered on record for the space of one year or upwards, and notwithstanding any rule or practice of the court in which

Trust.

Recital of covenant for payment of annuity.

Covenants for title, &c.

Power for grantee, on default of payment, to sue out execution on judgment.

That grantee need not revive judgment.

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the said judgment should be entered on record to the contrary; *And* that he the said [*grantor*], his heirs, executors, or administrators, should not nor would take or attempt to have or receive any advantage for want of reviving or keeping the said judgment on foot: *And* the said [*grantee*] did thereby covenant with the said [*grantor*] that in case the said [*grantor*], his heirs, executors, administrators, or assigns, should at any time thereafter be desirous of repurchasing the said annuity, and of such his desire should give unto the said [*grantee*], his executors, administrators, or assigns, notice in writing by the space of three calendar months, he the said [*grantee*], his heirs, executors, administrators, or assigns, would at the end of the said three months, on receiving all sum and sums of money due for the arrears of the said annuity, together with a proportional part thereof from the last day of payment thereof preceding such repurchase, up to the time of repurchasing the same as aforesaid, and all costs and charges, if any, incurred in consequence of default in payment of the said annuity, accept and take the sum of hundred and pounds and shillings, as and in full for the repurchase of the said annuity; *And* should or would at the costs and charges of the said [*grantor*], his heirs, executors, administrators, or assigns, deliver up the said bond to be cancelled, and acknowledge or cause satisfaction to be acknowledged on the record of the said judgment, and surrender the said copyhold premises to the use of the said [*grantor*], his heirs and assigns, or as he or they should direct; *As* in and by the said recited bond, warrant of attorney, and indenture, (all duly memorialized in the High Court of Chancery, pursuant to the act of parliament for that purpose made,) reference being thereunto respectively had, may more fully and at large appear. AND WHEREAS a judgment was duly entered up in the said Court of Common Pleas against the said [*grantor*], in or as of term, in the year of our Lord one thousand eight hundred and , at the suit of the said [*grantee*], upon the said bond, for the said sum of hundred pounds and costs of suit, in pursuance and by virtue of the said recited deed poll, or

Power of repurchase.

Reference to memorial.

Recital that judgment had been entered up.

warrant of attorney; (*c*) But no surrender of the said copyhold premises, or any part thereof, hath been made to the said [*grantee*] by the said [*grantor*], pursuant to the covenant in the said recited indenture for that purpose contained. (*d*) And whereas the said [*purchaser*] hath

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But that no surrender of copyhold premises had been made.

(*c*) If the surrender by the grantor, and the admission of the grantee have been already made, say,

AFTER SURRENDER AND ADMISSION.

"And whereas at a Court Baron held in and for the said manor of , on the day of , one thousand eight hundred and , the said [*grantor*] surrendered into the hands of the lord of the said manor, by the rod, according to the custom thereof, the said hereditaments and premises, with the rights, members, privileges, and appurtenances, *To the use* of the said [*grantee*], his heirs and assigns, *Upon* the same or a like *Condition* to that hereinbefore recited, and *Upon the trusts*, and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, mentioned, expressed, and declared of and concerning the same, in and by the said in part recited indenture of the day of , one thousand eight hundred and : At which court the said [*grantee*] was admitted tenant to the said hereditaments and premises, *To hold* to him, his heirs and assigns, according to the tenor and true intent and meaning of the said surrender, by the rod, at the will of the lord, according to the custom of the said manor, *By* the rents, customs, and services therefore due and of right accustomed."

Recital of surrender

on condition; and upon trusts.

Admission.

(*d*) If the grantee be dead, and the sale be made by his executor, without any other person joining in the conveyance, recite according to circumstances, to the following effect:

SALE BY EXECUTOR ALONE.

"And whereas the said [*grantee*] duly made and published his last will and testament in writing, bearing date on or about the day of , one thousand eight hundred and ; and thereby appointed the said [*executor*] and [*other executor*] of, &c. executors of his said will; and afterwards departed this life, without altering or revoking the same; and upon his decease the said

Recital of grantee's will, death, and probate, and that one executor declined to act.

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contracted and agreed with the said (*e*) [*grantee*] for the absolute purchase of the said annuity or yearly sum of pounds, and of all arrears now due and to grow due for the

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[*executor*] only, proved the same in the prerogative court of the Archbishop of Canterbury, and took upon himself the execution thereof; the said [*other executor*] having declined to act therein."

And instead of the *grantee's* name, substitute the *executor's* in the remainder of the draft, when not otherwise mentioned.

SALE BY PERSONS BENEFICIALLY INTERESTED.

In case of a specific bequest, say,

Recital of specific bequest.

"AND the said testator, in and by his said last will and testament, gave and bequeathed the said annuity or yearly sum of pounds, and all the arrears thereof; and all the securities for the payment thereof; (and the benefit of all policies of insurance which he had effected or might thereafter effect on the life of the said [*nominees*] or either of them), and all the benefit and advantage thereof, unto the said [*specific legatee*], his (*or* unto the said [*specific legatees*] their) executors, administrators, and assigns, (as tenants in common)."

Recital of residuary bequest.

In case of a residuary bequest, say,

"AND the said [*testator*], in and by his said last will and testament, after making several (devises and) bequests, gave and bequeathed all the rest, residue, and remainder of his (real and) personal estate and effects, unto and equally between the said [*vendors*] their (heirs) executors, administrators, and assigns."

Recital that executor is residuary legatee.

If the residuary legatee and executor be the same person, say,

"AND the said [*vendor*] is the residuary legatee of the same last will and testament, and is thereby entitled to the said annuity or yearly sum of pounds, for the life of the said [*grantor*], and the several securities for the same."

Recital of executor's assent to bequest.

"AND WHEREAS the said [*executor*] hath assented to the bequest of the said annuity, securities, and policies, so made by the said [*testator*] to the said [*vendors*] as aforesaid, as he the said [*executor*] doth hereby admit, acknow-

same, and also the said recited bond, judgment, and all other securities for the same, and all benefit and advantage thereof respectively, at or for the price or sum of hundred pounds (*f*); AND upon the treaty for the said pur-

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ledge, and declare, [testified by his executing these presents]."

And that copyhold premises should be surrendered.

If the sale be made by the administrator alone on an intestacy, substitute his name for the grantee's in the remainder of the draft, when not otherwise mentioned, and say,

SALE BY ADMINISTRATOR ALONE.

"AND WHEREAS the said [*grantee*] died intestate on or about the day of , one thousand eight hundred and , and the administration of all and singular the goods, chattels, and credits of the said [*grantee*] was, on or about the day of , one thousand eight hundred and , granted or committed to the said [*administrator*] by the (prerogative) court of (Canterbury); and the said [*administrator*] is thereby become the personal representative of the said [*grantee*]."

Recital of grantee's death and intestacy.

If the sale be made by the next of kin on an intestacy, add,

SALE BY PERSONS BENEFICIALLY INTERESTED.

"AND WHEREAS, the said [*vendors*] are the children (*or* brothers and sisters, (*or* first cousins, *vel cætera*) and only persons next of kin to the said [*grantee*], and as such (they the said [*vendors*], in their own right, and in right of their said wives) are beneficially entitled to the said annuity or yearly sum of pounds, and the several securities for the same."

Recital of being next of kin.

(*e*) If by executor, &c.

BY EXECUTOR, &C.

"[*executor* or *administrator*] (or [*vendors*])."

(*f*) In case of a bequest, say,

"AND at the request and for the satisfaction of the said [*purchaser*], and for the purpose of affording evidence of his assent to the said bequest, he the said [*executor*] hath agreed to join in the assignment or other assurance of the said annuity and premises, hereby made or intended so to be."

Recital of executor's consent to join in assignment.

When the administrator is not beneficially interested, say,

"AND the said [*administrator*] at the request of the said

Recital of administrator's consent to join in assignment.

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chase, it was agreed that all and singular the said copyhold premises, with their appurtenances, should be surrendered [by the said (*g*) [*grantor*]] to the use of the said [*purchaser*], his heirs and assigns, as hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for and in consideration of the sum of hundred pounds of lawful money of Great Britain [and Ireland], to the said (*h*) [*grantee*], in hand well and

Testatum.

Consideration.

[*purchaser*], hath agreed to join in the assignment or other assurance of the said annuity and premises, hereby made or intended so to be, for the purpose of conveying the legal interest thereof, which is vested in him as the administrator of the said intestate."

SURRENDER BY GRANTEE.

(*g*) [If the surrender and admission have been already perfected, and the grantee be alive, substitute,

"*grantee*,"

BY HIS HEIR.

Or if the grantee be dead, say,

"[*heir*] as the customary heir of the said [*grantee*]."

BY PERSONS BENEFICIALLY INTERESTED.

(*h*) If the sale be made by the persons beneficially interested, say,

"[*vendors*] in hand well and truly paid by the said [*purchaser*] at or before the sealing and delivery of these presents, the receipt of which said sum of hundred pounds, they the said [*vendors*] do, and each (*if more than two*), and every of them doth hereby acknowledge, and thereof, and of and from the same and every part thereof, do and each (and every) of them doth acquit, release, and discharge the said [*purchaser*], his executors, administrators, and assigns, and every of them for ever by these presents; *And also* in consideration of the sum of five shillings of lawful money of Great Britain [and Ireland], to him the said [*executor* or *administrator*] well and truly paid by the said [*purchaser*], at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *They* the said [*vendors*] *have*, and each (and every) of them *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *do* and each (and every) of them doth bargain, sell, assign, transfer, and set over; *And* the said [*executor* or *administrator*], at the request

Nominal consideration to executor, &c.

Assignment by vendors,

and confirmation of executor, &c.

truly paid by the said [*purchaser*], at or before the sealing and delivery of these presents, the receipt of which said sum of hundred pounds, he the said [*grantee*] doth hereby acknowledge, and thereof and of and from the same and every part thereof, doth acquit, release, and discharge the said [*purchaser*], his executors, administrators, and assigns, and every of them for ever, by these presents, *he* the said [*grantee*] *hath* bargained, sold, assigned, transferred, and set over, *And* by these presents *doth* bargain, sell, assign, transfer, and set over, unto the said [*purchaser*], his executors, administrators, and assigns, ALL THAT the said annuity or clear yearly sum of pounds, payable during the lives of the said [*nominees*] and the life of the survivor of them as aforesaid, and all arrears now due and henceforth to grow due for the same, together with such proportional part thereof as aforesaid; AND ALSO the said recited bond, warrant of attorney, judgment, and indenture, so respectively made, executed, and entered up for securing the payment of the same annuity or yearly sum as aforesaid; AND ALSO all and every the trusts, powers, remedies, covenants, and agreements, mentioned and contained in the same indenture, and thereby created and entered into for securing and enforcing the payment thereof; AND all other the securities for the same; *and* all the benefit and advantage thereof respectively: AND ALSO all the right, title, interest, trust, property, claim, and demand whatsoever, both at law and in equity, of (*i*) him the said [*grantor*], of, in, to, and out of the said annuity or yearly sum, security, and premises hereinbefore mentioned

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Assignment of annuity.

Bond, warrant of attorney, judgment, and indenture.

All covenants, &c.

All other securities, &c.

All the right, &c.

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and by the direction of the said [*vendors*], testified by their severally executing these presents, *hath* bargained, sold, assigned, transferred, and set over, ratified and confirmed; *And* by these presents *doth* bargain, sell, assign, transfer, and set over, ratify and confirm, unto the said [*purchaser*], his executors, &c." *ut supra*.

(*i*) If by legatees, &c. say, " them the said [*vendors*] and [*executor* or *administrator*], each and every of them,"

LEGATEES, &c.

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and intended to be hereby assigned, and every of them, and every part thereof: To HAVE, hold, receive, perceive, take, and enjoy the said annuity or yearly sum of pounds, arrears, securities, and all other the premises hereby assigned or expressed, and intended so to be, and every part and parcel thereof, and all the benefit and advantage thereof respectively, unto the said [*purchaser*], his executors, administrators, and assigns, to and for his and their own use and benefit absolutely, in as full, ample, and beneficial a manner, in all respects, and to all intents and purposes, as the said [*grantee*], his executors or administrators, could or might have done in case these presents had not been made; *Subject nevertheless* to such option or power of redeeming and repurchasing the said annuity or yearly sum, as the said [*grantor*] now hath, or is entitled to, under or by virtue of the said recited indenture, as aforesaid: AND for the further and better enabling, authorising, and empowering the said [*purchaser*], his executors, administrators, and assigns, to recover and receive the said annuity or yearly sum of pounds, and all the present and future arrears, and such proportional part thereof as aforesaid, and derive the full benefit and advantage of the several securities for the same, (*k*) *he* the said [*grantee*] *hath* made, ordained, constituted and appointed; *And* by these presents *doth* make, ordain, constitute and appoint the said [*purchaser*],

Habendum.

Subject to grantor's right to repurchase.

Power of attorney to receive and recover annuity.

PERSONS BENEFICIALLY INTERESTED.

(*k*) If by persons beneficially interested, say, "*They* the said [*vendors*] and [*executor* or *administrator*] *have*, and each and every of them *hath* made, ordained, constituted and appointed; AND by these presents *do*, and each and every of them *doth* make, ordain, constitute and appoint the said [*purchaser*], his executors, administrators, and assigns, the true and lawful attorney and attornies of them, each and every of them the said [*vendors*] and [*executor* or *administrator*], their, each, and every of their executors or administrators, in their, each, or every of their names or name, or in the name or names of the said [*purchaser*], his executors, administrators, or assigns, and in either case, &c." *ut supra*, 376.

his executors, administrators, and assigns, the true and lawful attorney and attornies of him the said [*grantee*], his executors or administrators, in his or their name or names, or in the name or names, and in either case for the sole use and benefit of the said [*purchaser*], his executors, administrators, and assigns, to ask, demand, sue for, recover, and receive of and from the said [*grantor*], his heirs, executors, administrators, or assigns, and all or any other person or persons whomsoever whom it doth or shall or may concern, the said annuity or yearly sum of pounds hereby assigned as aforesaid, or expressed and intended so to be; and all arrears now due, and henceforth to become due and payable for the same; and also such proportional part thereof as aforesaid: AND upon receipt thereof, or of any part thereof, receipts, releases, acquittances, and other good and sufficient discharges, to make, sign, seal, execute, and deliver for the same, or any part or parts thereof respectively: *And* upon the non-payment thereof, or of any part or parts thereof respectively, to bring, commence, institute, prosecute, and carry on any action or actions, suit or suits, or other proceedings upon or by virtue of the said several securities, or any of them; and to sue out any execution or executions upon or by virtue of the said judgment, for the recovery of the said annuity or yearly sum of pounds; and the present and future arrears, and such proportional part thereof as aforesaid; and all costs, charges, and expenses attending the non-payment or recovery thereof, as he the said [*purchaser*], his executors, administrators, or assigns, shall think fit or be advised: AND *generally* to make, do, and execute all such further and other acts, deeds, matters and things, and to take and pursue all such other legal or equitable ways, means, courses, or expedients for effectuating the premises aforesaid, as fully and effectually as (*l*) he the said [*grantee*], his executors, or administra-

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(*l*) If by the persons beneficially interested, and executor, &c. "they the said [*vendors*] and [*executor* or *administrator*], any or either of them, their, any, or either of their executors or administrators, could or might have done if these presents had not been made; *They* the said [*vendors*], and each and every of them, hereby, &c." *ut supra*, 377.

PERSONS BENEFICIALLY INTERESTED.

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tors would or might have done if these presents had not been made; *He* the said [*grantee*] hereby allowing, ratifying, and confirming, and agreeing to allow, ratify, and confirm, all and whatsoever the said [*purchaser*], his executors, administrators, or assigns, shall lawfully do or cause to be done in or about the premises by virtue of these presents. (*Add* covenant by [*purchaser*] to indemnify [*vendor*] from costs in consequence of his name being used in any action, &c. *ut ante*, 361. *If the sale be made by the grantee himself*, see form of the covenants, *ante*, 302.) (*m*)

Covenants by executor or administrator, not beneficially interested in the purchase money, that he has not incumbered.

(*m*) If the sale be made by an executor or administrator, who is not beneficially interested in the purchase money, say,

"AND THE SAID [*executor* or *administrator*], for himself, his heirs, executors and administrators, doth hereby covenant, promise, and agree with and to the said [*purchaser*], his executors, administrators, and assigns, that he the said [*executor* or *administrator*], hath not at any time or times heretofore made, done, or committed, or knowingly or willingly suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or wherewith, or by reason or means whereof the said annuity or yearly sum of pounds, hereby assigned or expressed and intended so to be, or the arrears thereof, or such proportionate part thereof as aforesaid, or any of the securities for the same, is, shall, can, or may be impeached, charged, incumbered, released, discharged, determined, affected, or rendered void or voidable: AND that he the said [*executor* or *administrator*], his executors or administrators, shall not nor will at any time or times hereafter revoke or make void any of the powers or authorities hereinbefore contained for the recovery of the same annuity, and the arrears thereof, and such proportional part thereof as aforesaid; but shall and will permit and suffer his and their name and names to be made use of in any action, suit, or other proceeding to be brought, commenced, instituted, or carried on for that purpose; he the said [*executor* or *administrator*], his executors and administrators, being indemnified from all loss, costs, charges, damages, and expenses relating thereto, or to be occasioned thereby."

And not to revoke powers;

but to suffer name to be used; being indemnified from costs.

Covenants by executor or administrator solely interested.

And omit the other covenants: but if the executor or administrator be solely interested in the purchase money, the other covenants should

(*n*) And the said (o) [*grantee*] doth hereby order, di-

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be inserted; in which case the covenants for title may immediately succeed without a fresh lien part, thus,

"And also *That* notwithstanding, &c." *ut post*, 379.

If the persons beneficially interested in the purchase money join with the executor or administrator, in the assignment, the covenants should be similar to the following:

"And each of them the said [*vendors*] and [*executor* or *administrator*], severally, separate, and apart from the other and others of them, doth hereby for himself and herself respectively, and his and her respective heirs, executors, and administrators; and as, to, for, and concerning only the acts, deeds, and defaults of himself and herself respectively, and his and her respective executors and administrators, covenant, declare, and agree with and to the said [*purchaser*], his executors, administrators, and assigns, in manner following, that is to say; that they the [*vendors*] and [*executor* or *administrator*], have not at any time or times heretofore made, done, or committed, or knowingly or willingly suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or wherewith, or by reason or means whereof, the said annuity or yearly sum of pounds, hereby assigned or expressed and intended so to be, or the arrears thereof, or such proportionate part thereof as aforesaid, or any of the securities for the same, is, shall, can, or may be impeached, charged, incumbered, released, discharged, determined, affected, or rendered void or voidable: And that they the said [*vendors*] and [*executor* or *administrator*], their executors or administrators, shall not, nor will, at any time or times hereafter, revoke or make void the power or authority hereinbefore contained for the recovery of the same annuity, and the arrears thereof, and such proportional part thereof as aforesaid; But shall and will permit and suffer their and his names and name to be made use of in any action, suit, or other proceeding to be brought, commenced, instituted, or carried on for that purpose; they the said [*vendors*] and [*executor* or *administrator*], their executors and administrators, being indemnified from

Covenants by persons beneficially interested, and executor or administrator, severally, separate and apart.

That they have not incumbered.

And not to revoke power hereby given, being indemnified from costs in consequence of their names being used.

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rect, and appoint the said [*grantor*], or his heirs, forthall loss, costs, charges, damages and expenses relating thereto, or to be occasioned thereby. AND THE SAID [*vendor*] doth hereby for himself, his heirs, executors, and administrators, as far as relates to and concerns the one undivided part of the said his wife, of and in the said annuity or yearly sum, monies, securities, and premises, hereby assigned or otherwise assured or intended so to be, and as to and concerning only the acts, deeds, title, and defaults of himself and his said wife, and of the said [*grantee*], relating thereto, and so only as to be answerable in damages rateably for and to the value of the same part; AND THE SAID [*vendor*] doth hereby for himself, his heirs, executors, and administrators, as far as relates to and concerns the one undivided part of him the said [*vendor*] of and in the said annuity or yearly sum, monies, securities, and premises, hereby assigned or otherwise assured, or intended so to be, and as to and concerning only the acts, deeds, title, and defaults of himself, and of the said [*grantee*], relating thereto, and so only as to be answerable in damages rateably for and to the value of the same part; AND THE SAID, &c. (*making as many lien parts as there are parties beneficially interested*) covenant, &c." *as below.*

Covenant by person beneficially interested as to his wife's undivided part of an annuity, and as to his, her, and grantee's acts, and so as to be answerable only rateably to the value thereof.

Covenant by another as to his part of annuity, and as to his and grantee's acts, and so as to be answerable only rateably to the value thereof.

Covenant by a specific or residuary legatee.

If by a specific or residuary legatee, say,

"AND THE SAID [*vendor*] doth hereby for himself, his heirs, executors, and administrators"

" covenant, promise, and agree with and to the said [*purchaser*], his executors, administrators, and assigns, in manner following, that is to say; *That* notwithstanding any act, deed, matter or thing made, done, executed, committed, or knowingly suffered to the contrary by them the said [*vendors*], or by the said [*grantee*], the said annuity or yearly sum of pounds, at the time of the sealing and delivery of these presents, is a good and existing annuity for the lives of the said [*nominees*], and the life of the survivor of them: AND that all and every the securities for the same are now valid and effectual in the law."

Limited to acts of vendors and grantee.

That annuity

and securities are valid.

with to surrender or cause to be surrendered, *All* and

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

AND ALSO that they the said [*vendors*] and [*executor* or *administrator*] now have, or some or one of them have or hath in themselves, himself, or herself, good right, full power, and lawful and absolute authority, to assign and transfer the said annuity or yearly sum, arrears, securities, and other the premises hereby assigned or expressed and intended so to be, and every part and parcel thereof respectively, unto the said [*purchaser*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents:

For title.

AND FURTHER, that it shall and may be lawful to and for the said [*purchaser*], his executors, administrators, and assigns, from time to time to have, receive, take, and enjoy the said annuity or yearly sum, arrears, securities, and premises hereby assigned or expressed or intended so to be, and every part and parcel thereof, and all the benefit and advantage thereof respectively, to and for his and their own use and benefit, (*subject* as aforesaid,) without any let, suit, trouble, molestation, denial, or interruption of, from, or by them the said [*vendor*], or any or either of them, or their, any, or either of their executors or administrators, or by any other person or persons claiming or to claim by, from, through, under, or in trust for them, any, or either of them, or by, from, through, under, or in trust for the said [*grantee*]:

For quiet enjoyment.

AND free and clear and freely and clearly acquitted, exonerated, and discharged or otherwise by them the said [*vendors*], their heirs, executors, or administrators, or some or one of them well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, assignments, estates, titles, troubles, charges, and incumbrances whatsoever, made, done, or committed by them the said [*vendors*], or any or either of them, or the said [*grantee*], deceased, or by any person or persons claiming by, from, through, under, or in trust for any or either of them:

Free from incumbrances.

AND MOREOVER, that they the said [*vendors*], and each and every of them, their, each, and every of their executors, and administrators, and all and every other person and persons whomsoever, having or claiming

And for further assurance.

singular the said copyhold premises mentioned and com-

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

any right, title, or interest of, in, to, or out of the said annuity or yearly sum, arrears, securities, and premises hereby assigned or expressed, and intended so to be, by, from, under, or in trust for them, any or either of them, shall and will from time to time, and at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, and things, devices, assignments, transfers, and assurances in the law whatsoever for further and better assigning and assuring the said annuity or yearly sum, arrears, securities, and premises hereby assigned or expressed and intended so to be, and every of them, and every part and parts thereof respectively, unto the said [*purchaser*], his executors, administrators, and assigns; *and* for further and better enabling and empowering him and them to receive and take the benefit and advantage thereof, to and for his and their absolute use; *As* by him the said [*purchaser*], his executors, administrators, or assigns, or his or their counsel learned in the law, shall or may be reasonably devised or advised and required."

SURRENDER MADE.

(*n*) If the surrender and admission have been made, say,

Covenant by grantee to surrender to purchaser.

"AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the said agreement, and for the considerations aforesaid, (he the said [*grantor*]")

If the surrender and admission have been made, and the grantee be dead, and the persons beneficially interested in the annuity are his specific devisees of the copyhold premises, or his residuary devisees, then they should covenant to surrender; which may be done without another testatum, by adding, after "advised and required," above,

Covenant by devisees of grantor to surrender to purchaser.

"AND LASTLY, that they the said [*vendors*], or their heirs, and all and every other persons and persons having any estate or interest therein, under or through the said [*grantee*], or under or through either of them, the said [*vendors*], or either of their heirs, shall and will at the request, &c." *ut post*, 382, n.

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

prised in the said recited indenture, and every of them, and every part and parts thereof, with their appurtenances, *To the use* of the said [*purchaser*], his heirs and assigns, according to the custom of the said manor of *To the intent* that he the said [*purchaser*], his heirs and assigns, may stand seised and possessed of all and singular the same premises, with the appurtenances, *Subject* to the same conditions, *And upon* such and the same trusts, and by, with, under, and subject to the same powers and agreements as in the said recited indenture are mentioned and contained for securing the payment of the said annuity of pounds for the benefit of the said [*purchaser*], his executors, administrators, and assigns, instead of the said [*grantee*], his executors and administrators; *But subject* to the like clause of redemption for the benefit of the said [*purchaser*], his heirs and assigns, as in the same indenture is also mentioned and contained: And the said [*purchaser*] doth hereby for himself, his heirs and assigns, expressly

Direction by grantee to grantor to surrender copyhold premises to purchaser.

Use.

Intent.

Conditions.

Trusts.

Declaration of trust by purchaser.

But if the copyhold premises have descended to the grantee's heir, he should, after "aforesaid," *ante*, 381, (*n*). covenant to surrender, thus:

Covenant by heir of grantor to surrender to purchaser.

"*And also* for and in consideration of the sum of five shillings of lawful money of Great Britain [and Ireland] to him the said [*heir*], well and truly paid by the said [*purchaser*] at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *He* the said [*heir*], at the request and by the direction and appointment of the said [*executor* or *administrator*] (or [*vendors*] and [*executor* or *administrator*]), testified by his (*or* their severally) sealing and delivering these presents,"

"doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said [*purchaser*], his executors, administrators, and assigns, *That* he the said [*grantee* or *heir*], shall and will, at the request, costs, and charges of the said [*purchaser*], his executors, administrators, or assigns, surrender into the hands of the lord or lords, lady or ladies, of the said manor of for the time being, according to the custom of the said manor, *All* and singular the said copyhold premises, mentioned and comprised, &c." *ut supra.*

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

declare, that he and they shall and will stand seised and be possessed of, all and singular the same premises with the appurtenances accordingly. AND the said (*p*) [*grantee*] doth hereby lastly declare, that the surrender to be made by the said [*grantor*], or his heirs, to the use of the said [*purchaser*], his heirs or assigns as aforesaid, pursuant to the directions hereinbefore for that purpose contained, shall be deemed and taken, in full satisfaction and discharge of the covenant entered into by him the said [*grantor*] with the said [*grantee*] for that purpose, by the said recited indenture as aforesaid. IN WITNESS, &c.

Declaration by grantee, that surrender to be made shall be in satisfaction of grantor's covenant.

EXECUTOR, &C. ALONE.

(*o*) If the conveyance be made by an executor or administrator alone, substitute,

" [*executor* or *administrator*]"

PERSONS BENEFICIALLY INTERESTED, AND EXECUTOR, &C.

If the conveyance be made by persons beneficially interested, and an executor or administrator, substitute,

" AND all of them the said [*vendors*] and [*executor* or *administrator*] *do*, and each and every of them *doth*," &c.

EXECUTOR, &C. ALONE.

(*p*) If by executor, &c. say,

" [*executor* or *administrator*] doth, &c. *ut supra.*

PERSONS BENEFICIALLY INTERESTED, AND EXECUTOR, &C.

If by persons beneficially interested, and executor, &c. say,

" [*vendors*] and [*executor* or *administrator*] do, and each and every of them, doth hereby, &c." *ut supra.*

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

ASSIGNMENT *of an* ANNUITY *for the Life of the Grantor, charged on his Life Interest on Dividends of Stock; and* ASSIGNMENT *of the Annuity,* BOND, WARRANT OF ATTORNEY, *and* JUDGMENT *on which Execution has been entered up, and either with or without a* POLICY OF INSURANCE *on the Grantor's Life; and* ASSIGNMENT *of the Life Interest in the Dividends to a new Trustee, or* DECLARATION *by the old Trustee to stand possessed of the Dividends upon the Trusts of the Grant.*

THIS INDENTURE made the day of in the year, *George the Fourth*, &c. and in the year of our Lord 18 ; BETWEEN [*grantee*], of, &c. of the first part, [*trustee*] of, &c. of the second part (*a*), [*purchaser*] of, &c. of the third part, and [*purchaser's trustee*] of, &c. of the fourth part. WHEREAS [*grantor*] of, &c. by his bond or obligation in writing, under his hand and seal, bearing date on or about the day of one thousand eight hundred and became bound unto the said [*grantee*] in the penal sum of pounds; *with a condition* thereunder written for making void the same, if the said [*grantor*] should well and truly pay unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural life of him the said [*grantor*], *One* annuity or yearly sum of pounds of lawful money of Great Britain [and Ireland], free from taxes, and clear of all other deductions whatsoever, on the day of , and the day of in every year, by even and equal portions, the first payment thereof to

Parties.

Recital of annuity bond.

GRANTOR, A PARTY.

(*a*) *Vide ante*, 341.

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

begin and be made on the day of next ensuing the date of the said bond or obligation; AND *also* if the heirs, executors, or administrators of the said [*grantor*] should well and truly pay unto the said [*grantee*], his executors, administrators, or assigns, in case the said [*grantor*] should depart this life on any day on which any half yearly payment of the said annuity or yearly sum of hundred pounds should become due, the whole of such half yearly payment; *And* if on any other day, in case such day should happen before any half yearly payment of the said annuity or yearly sum should have become due, then a proportionable part of the half yearly payment of the said annuity or yearly sum of hundred pounds, to be computed from the day of the date of the said bond or obligation, to the day of the death of the said [*grantor*]; *But* in case any half yearly payment of such annuity or yearly sum of hundred pounds should have become due at the time of the decease of the said [*grantor*], then, from such of the said half yearly days of payment of the said annuity or yearly sum of hundred pounds, as should be next and immediately preceding the day of the death of the said [*grantor*], to the day of his decease. (AND WHEREAS the said [*grantor*], for better securing the payment of the said annuity or yearly sum of hundred pounds, did, by a writing under his hand and seal, bearing even date with the said recited bond or obligation, authorise certain attornies therein named, by confession or otherwise, to suffer judgment to be entered up against him in his majesty's court of (king's bench, at Westminster), in an action of debt upon the said bond, at the suit of the said [*grantee*], for the sum of hundred pounds, and costs of suit; AND judgment was accordingly on or about the day of entered up against the said [*grantor*], as of term in the year of the reign of king George the (third).) AND WHEREAS by indenture, bearing even date with the said recited bond or obligation, and made or expressed to be made between the said [*grantor*] of the first part, the said [*grantee*] of the second part, and the said [*trustee*] of the third part; *After reciting* that by an indenture, bearing date on or about the

Recital of warrant of attorney

and judgment.

Recital of grant of annuity.

Reference to settlement, whereby grant-

day of one thousand seven hundred and , and made or expressed to be made between the said [*grantor*] of the first part, [*lady's father*] of the second part, [*lady*] of the third part, and [*trustees*] of the fourth part, the said [*trustees*], their executors, administrators, and assigns, were directed by and out of the interest and dividends, from time to time, arising and to arise upon or from pounds, three per centum consolidated bank annuities, then standing in their names, or upon or from the stocks, funds, and securities for the same, yearly and every year, during the joint lives of the said [*grantor*], and [*lady*], to pay the yearly sum of pounds of lawful money of Great Britain [and Ireland], by half yearly payments, as therein mentioned, unto the said [*lady*], for her sole and separate use and benefit; *And* from time to time to pay the residue and surplus of the said interest and dividends, over and above what should be sufficient from time to time to pay and satisfy the said yearly sum of pounds, in manner therein mentioned, and all costs and charges attending the execution of the trusts thereby declared, unto the said [*grantor*] or his assigns, to and for his and their own use and benefit, for and during the joint lives of him the said [*grantor*], and the said [*lady*]; *And* if the said [*grantor*] should survive the said [*lady*], then from and after her decease, to pay unto, or authorise or permit the said [*grantor*], or his assigns, to receive and take the whole of such interest and dividends to and for his and their own use and benefit, for and during the term of his natural life; *It is witnessed*, that in consideration of the sum of pounds to the said [*grantor*] paid by the said [*grantee*], in manner therein mentioned, the said [*grantor*] did give, grant, bargain, sell, and confirm unto the said [*grantee*], his executors, administrators, and assigns, for and during the term of the natural life of the said [*grantor*], *One* annuity or clear yearly sum of pounds of lawful money of Great Britain [and Ireland], to be charged and chargeable upon, and to be issuing, payable, had, received, and taken by and out of the interest and dividends of the said pounds, three per centum consolidated bank annuities, *To have*, hold, receive, take and enjoy the same annuity or clear yearly sum unto the said [*grantee*],

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

or becomes entitled to dividends for his life.

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

his executors, administrators, and assigns, thenceforth for and during the natural life of the said [*grantor*], to be paid and payable unto the said [*grantee*], his executors, administrators, and assigns, half yearly, free from taxes, charges, rates, assessments, or other impositions whatsoever, upon the days and times, and in the manner mentioned and expressed in the condition of the said in part recited bond or obligation: AND it is by the said indenture now in recital further witnessed, that for better securing the due and punctual payment of the said annuity or yearly sum of pounds unto the said [*grantee*], his executors, administrators, and assigns, for and during the natural life of the said [*grantor*], he, the said [*grantor*], did bargain, sell, assign, transfer, and set over, unto the said [*trustee*], his executors, administrators, and assigns, *All* the interest, dividends, and annual produce of the said pounds, three per centum consolidated bank annuities, to which he the said [*grantor*] was intitled for his life, under and by virtue of the said indenture of settlement as aforesaid, *To have*, hold, receive, take, and enjoy the same unto the said [*trustee*], his executors, administrators, and assigns, for and during the natural life of the said [*grantor*], *Upon* the trusts, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements therein mentioned, expressed, and declared of and concerning the same, that is to say; *Upon trust* to receive the same, and thereout to pay unto the said [*grantee*], his executors, administrators, and assigns, the said annuity or yearly sum of pounds, mentioned and intended to be thereby granted as aforesaid, during the natural life of the said [*grantor*], and all arrears thereof, and all costs, charges, and expenses (if any) which they the said [*grantee*] and [*trustee*], or either of them, their or either of their executors, administrators, or assigns, should pay, sustain, expend, or be put unto for or by reason or means of the non-payment of the said annuity or clear yearly sum of pounds, or any part thereof, at or on the days and times, and in the manner thereinbefore expressed or appointed for the payment of the same, or the performance of the trusts thereby created, expressed, or declared; AND

Recital of assignment of dividends to a trustee.

to pay the residue of the said interest and dividends unto the said [*grantor*], his executors, administrators, and assigns, or as he or they should direct and appoint: AND the said [*grantor*] thereby made, ordained, constituted, and appointed the said [*trustee*], his executors, administrators, and assigns, and every of them, his attorney and attornies, to ask, demand, sue for, recover, and receive, the said interest and dividends, or any part thereof. AND in the said in part recited indenture there is contained, a proviso enabling the said [*grantor*] to repurchase the said annuity or clear yearly sum of pounds, upon giving unto the said [*grantee*], his executors, administrators, or assigns, seven days notice of his intention, and paying the sum of [*original purchase money*] pounds, and one half-yearly payment of the said annuity, with all arrears which should be then due, and a proportionate part thereof, up to and until repurchasing the same. AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*vendor*], for the absolute purchase of the said annuity or clear yearly sum of pounds, for the life of the said [*grantor*], and the securities for the same, at or for the price or sum of pounds. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of pounds of lawful money of Great Britain [and Ireland], to the said [*grantee*], well and truly paid by the said [*purchaser*] at or before the sealing and delivery of these presents, the receipt whereof he the said [*grantee*] doth hereby acknowledge, and of and from the same sum and every part thereof, doth hereby acquit, release, and for ever discharge the said [*purchaser*], his executors and administrators, *He* the said [*grantee*] (*b*), *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *doth* bargain, sell, assign, transfer, and set over, unto the said [*purchaser*], his executors, administrators, and assigns, ALL THAT the said annuity or clear yearly sum of pounds, in and by the said in part recited bond or obligation, judgment, and indenture, secured, granted, and made payable unto the said [*grantee*], his executors, administrators, and assigns, as hereinbefore mentioned; *And* all

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

Recital of power of attorney.

Recital of power of repurchase.

Testatum.

Assignment of annuity,

arrears, bond,

(*b*) *Vide ante*, 342, (*b*).

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

warrant of attorney, judgment, and indenture.

All monies, &c.

All the right.

Habendum of annuity.

Subject to repurchase.

Power of attorney to receive and recover annuity.

arrears now due thereon; *Together* with the said bond or obligation, warrant of attorney, judgment, and indenture; (*c*) *And* all and every sum and sums of money thereby respectively secured or thereupon recoverable; *And* all the benefit and advantage thereof respectively, and also of the grant and covenants contained in the same indenture: AND all the right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [*grantee*], of, in, to, or out of the same annuity or clear yearly sum, (*d*) monies, securities, and premises, and every or any part thereof respectively, To HAVE, hold, receive, take, and enjoy, the said annuity or clear yearly sum of pounds (*d*), monies, securities, and premises, hereby assigned or otherwise assured, or intended so to be, unto the said [*purchaser*], his executors, administrators, and assigns, (henceforth *or*) from the day of last past, for and during the natural life of the said [*grantor*]; *Subject nevertheless* to the proviso contained in the said in part recited indenture, enabling the said [*grantor*] to repurchase the said annuity or clear yearly sum, in the manner and on the terms therein mentioned. AND for the considerations aforesaid, *he* the said [*grantee*] *hath* made, nominated, constituted, and appointed; *And* by these presents *doth* make, nominate, constitute,

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ASSIGNMENT OF INSURANCE ON A LIFE OR LIVES.

(*c*) If the grantee has effected a policy of insurance on the lives of the nominees, and there is no covenant in the annuity deed respecting insurance, it may be assigned in the following manner, without any previous recital;

Reference to policy.

"*And also* ALL THAT policy of insurance, bearing date on or about the day of , 18 , and numbered , given, granted, or issued by the (Globe) Life Insurance Office, whereby for the annual premium of pounds, the sum of pounds, is insured to be paid to the said [*grantee,*] his executors, administrators, and assigns, upon the decease of the said [*grantor*], (*or* upon the decease of the survivor of them the said [*nominees*];)"

POLICY OF INSURANCE.

(*d*) If there be a policy of insurance, say,

"policy of insurance,"

and appoint the said [*purchaser*], his executors, administrators, and assigns, his true and lawful attorney and attornies, irrevocably, in the name of him the said [*grantee*], his executors or administrators, or in the name or names of the said [*purchaser*], his executors, administrators, or assigns, but in either case for the sole use and benefit of the said [*purchaser*], his executors, administrators, and assigns, to ask, demand, sue for, recover, and receive, the said annuity or clear yearly sum of pounds, and the arrears and future payments thereof (*e*), and all and every or any other sum or sums of money due or to become due, under the said in part recited securities, or any of them, and every or any part or parts thereof respectively, of and from the person or persons liable to pay the same respectively; *And* in default of the payment thereof, or of any part thereof respectively, to bring, commence, sue forth, and prosecute, any action or actions, suit or suits, upon or by virtue of the said several securities, or any of them, and to sue out any execution or executions, upon or by virtue of the said judgment, for recovering the said annuity or clear yearly sum of pounds, monies, and premises hereby assigned, or otherwise assured or intended so to be, or any part or parts thereof, and all costs, charges, and expenses attending the non-payment or recovery thereof; or to use such other ways and means for compelling or enforcing the payment of the same respectively, as to the said [*purchaser*], his executors, administrators or assigns, shall seem meet; *And* upon the receipt of the said annuity or clear yearly sum of pounds, and monies hereby assigned or otherwise assured, or intended so to be, or any part or parts thereof respectively, to sign, seal, deliver, and give, one or more receipt or receipts, acquittance or acquittances, or other discharge or discharges for the same; *And also* upon the repurchase of the said annuity or clear yearly sum of pounds, or upon any other occasion, to release the said judgment, or to enter satisfaction for the same upon the record thereof; *Or* to do any other acts or things for avoiding or

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

(*e*) If there be a policy of insurance, say, "and the monies to become due on the said policy of insurance,"

POLICY OF INSURANCE

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

releasing the said annuity or clear yearly sum of pounds, and all or any of the securities hereby assigned or otherwise assured, or intended so to be: *And* for all or any of the purposes aforesaid, from time to time to nominate and appoint one or more attorney or attornies, under him the said [*purchaser*], his executors, administrators, or assigns; and to revoke, alter, and vary, such nomination and appointment at his and their pleasure: *And generally* to do and perform all such other acts, deeds, matters, and things, in and about the premises, as fully and effectually to all intents and purposes, as he the said [*grantee*], his executors or administrators, might or could do if personally present and acting therein; *He* the said [*grantee*] hereby ratifying and confirming, and agreeing to ratify and confirm, all and whatsoever the said [*purchaser*], his executors, administrators, or assigns, or his or their substitute or substitutes, shall lawfully do or cause to be done, in or about the premises by virtue of these presents.

Covenant by purchaser to indemnify vendor from costs, &c. in consequence of his name being used.

AND THE SAID [*purchaser*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*grantee*], his executors and administrators, That he the said [*purchaser*], his heirs, executors, administrators, or assigns, shall and will from time to time, and at all times hereafter, pay unto, and in the mean time save harmless and keep indemnified, the said [*grantee*], his executors and administrators, of, from, and against all costs, charges, and expenses, which he or they shall or may be put unto, bear, pay, or sustain, for or by reason, or on account of the name or names of the said [*grantee*], his executors or administrators, being used in any action, suit, or other proceeding which may be brought, commenced, or prosecuted, by virtue of any power or authority hereby given, or in pursuance hereof to be given to the said [*purchaser*], his executors, administrators, or assigns; so as the same do not arise or accrue through the collusion or act of the said [*grantee*], his executors, or administrators.

Covenant by vendor, that annuity is subsisting,

AND THE SAID [*grantee*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*purchaser*], his executors, administrators, and assigns, that notwithstanding any act, deed, matter, or thing whatsoever, had, made, done, committed, per-

mitted, or suffered to the contrary by the said [*grantee*], the said recited annuity or clear yearly sum of pounds is a good, valid, and subsisting annuity: And that notwithstanding any such act, deed, matter, or thing as aforesaid, the same annuity or clear yearly sum is not released, extinguished, or determined: And that notwithstanding any such act, deed, matter, or thing as aforesaid, he the said [*grantee*] now hath in himself good right, full power, and lawful and absolute authority by these presents, to bargain, sell, assign, and set over, or otherwise assure the said annuity or clear yearly sum of pounds, bond, warrant of attorney, judgment (*f*), and covenant, monies, and premises respectively, hereby assigned or otherwise assured, or intended so to be, and every part and parcel of the same, with the appurtenances, unto the said [*purchaser*], his executors, administrators, and assigns, according to the true intent and meaning of these presents: And that he the said [*grantee*], his executors or administrators, shall not nor will at any time hereafter, without the consent in writing of the said [*purchaser*], his executors, administrators or assigns, or the order or decree of some court of law or equity, alter, revoke, or annul any of the powers or authorities hereinbefore given to the said [*purchaser*], his executors, administrators, and assigns, for receiving and recovering the said annuity or clear yearly sum, monies, and premises hereby assigned, or otherwise assured, or intended so to be; but shall and will permit and suffer his and their name or names to be made use of in any action, suit, or other proceeding to be brought, commenced, instituted, or carried on for that purpose; he the said [*grantee*], his executors and administrators, being indemnified from all loss, costs, charges, damages, and expenses relating thereto, or to be occasioned thereby: And further, that henceforth and from time to time, and at all times hereafter, during the life of the said [*grantor*], or till the said annuity or clear yearly sum of pounds shall be repurchased, it shall or may be lawful to and for the said [*purchaser*], his executors, administra-

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

and not released.

For title.

Not to revoke powers, but suffer name to be used, being indemnified from costs.

For peaceable enjoyment.

(*f*) If there be a policy of insurance, say, "policy of insurance,"

POLICY OF INSURANCE.

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

tors, and assigns, to have, hold, and enjoy the said annuity or clear yearly sum of pounds, and to receive and take the benefit thereof, and of the said securities for the same (*g*), in manner and form aforesaid, according to the true intent and meaning of these presents, without any let, suit, trouble, interruption, hindrance, or denial whatsoever, of, from, or by the said [*grantee*], his executors or administrators: AND free and clear, and freely, clearly, and absolutely acquitted, exonerated, released, and discharged, or otherwise by him the said [*grantee*], his heirs, executors or administrators, at his or their own costs and charges, in all things well and sufficiently protected, defended, saved harmless, and kept indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, mortgages, assignments, releases, titles, troubles, liens, charges, and incumbrances whatsoever, at any time or times heretofore, and to be at any time and from time to time hereafter made, done, committed, executed, or suffered by the said [*grantee*], his executors or administrators: AND LASTLY, that he the said [*grantee*], his executors, and administrators, shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges in the law of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, assignments, letters of attorney, and other assurances in the law whatsoever, for further, better, and more effectually or satisfactorily assigning or otherwise assuring the said annuity or clear yearly sum of pounds, bond, warrant of attorney, judgment (*h*), and covenant, monies, and premises, hereby assigned or otherwise assured, or intended so to be, and every part and parcel of the same, unto the said [*purchaser*], his executors, adminis-

Free from incumbrances.

For further assurance.

POLICY OF INSURANCE.

(*g*) If there be a policy of insurance, say,
"and also the benefit of the said policy of insurance,"

(*h*) If there be a policy of insurance, say,
"policy of insurance,"

trators, and assigns, and also for authorising and empowering him and them to receive and derive the full benefit of the said annuity or clear yearly sum, bond, warrant of attorney, judgment (*h*), and covenant, according to the true intent and meaning of these presents; *As* by the said [*purchaser*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required; [*So* as such further assurances or any of them, shall not contain in them, or imply any further or other covenant or warranty, on the part of the person or persons who shall be requested to make and execute the same, than for himself, herself, and themselves respectively, and the acts, deeds, and defaults of himself, herself, and themselves respectively, and his, her, and their respective executors and administrators; *And* so as the person or persons, who shall be requested to do such acts, or make such further assurances, shall not be compelled or compellable, for the purpose of making or doing the same, to go or travel from his, her, or their then dwelling or place of abode, or respective dwellings or places of abode.] AND THIS INDENTURE FURTHER WITNESSETH (*i*), that for the considerations aforesaid,

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

Further testatum.

(*h*) If there be a policy of insurance, say, "policy of insurance,"

POLICY OF INSURANCE.

(*i*) If the old trustee be continued, add,

OLD TRUSTEE CONTINUED.

"*And it is hereby declared and agreed,* by and between the said parties to these presents, as far as they are respectively interested; [*and* the said [*trustee*], at the instance and request of the said [*grantee*], testified by his sealing and delivering these presents, doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*purchaser*], his executors, administrators, and assigns,] That he the said [*trustee*], his executors, administrators, and assigns, shall and will from time to time, and at all times hereafter, during the life of the said [*grantor*], stand possessed of and interested in the said interest and dividends, UPON THE TRUSTS, &c. *ut post*, 395. ADD *covenant from the trustee to the purchaser, that he has not incumbered,* ut post, 395.

Declaration of trust.

Covenant by old trustee, that he has not incumbered.

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

and for and in consideration of the sum of ten shillings of lawful money of Great Britain [and Ireland], to the said [*old trustee*] paid by the said [*new trustee*], at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) *He* the said [*old trustee*], at the request and by the direction of the said [*grantee*], and upon the nomination and appointment of the said [*purchaser*], testified by their severally sealing and delivering these presents, *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents doth bargain, sell, assign, transfer, and set over, unto the said [*new trustee*], his executors, administrators, and assigns, ALL THOSE the said dividends and interest of the said pounds, three per centum consolidated bank annuities, which in and by the hereinbefore in part recited indenture were assigned by the said [*grantor*] to the said [*old trustee*], his executors, administrators, and assigns: AND all the right, title, interest, property, claim, and demand whatsoever, of him the said [*old trustee*], of, in, to, or out of the same. TO HAVE, hold, receive, take, and enjoy the said interest and dividends of the said pounds, three per centum consolidated bank annuities, unto the said [*new trustee*], his executors, administrators, and assigns, for and during the natural life of the said [*grantor*]; UPON THE TRUSTS, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements mentioned, expressed, and declared of and concerning the same, in and by the said in part recited indenture of the day of one thousand eight hundred and ; *But so nevertheless*, that all the benefit and advantage of the same trusts, by the same indenture declared or intended in favour of the said [*grantee*], his executors, administrators, and assigns, shall belong to, and be received and enjoyed by the said [*purchaser*], his executors, administrators, and assigns. AND THE SAID [*old trustee*], for himself, his heirs, executors, and administrators, doth hereby covenant and declare with and to the said [*new trustee*], his executors, administrators, and assigns, that he the said [*old trustee*] hath not at any time heretofore made, done, executed,

Assignment by old trustee by the direction and appointment of vendor and purchaser, to new trustee, of

dividends.

All the right.

Habendum of dividends.

Upon trusts mentioned in grant.

But trusts for vendor to be for purchaser's benefit.

Covenant by the old trustee that he has not incumbered.

committed, or knowingly or willingly suffered any act, matter, or thing whatsoever, whereby or wherewith, or by reason or means whereof, the said interest and dividends, ((*k*) hereby assigned, or otherwise assured, or intended so to be,) or any part thereof, are, is, can, shall, or may be impeached, charged, incumbered, or in any way affected. IN WITNESS, &c.

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

(*k*) If the old trustee be continued, omit the part in parentheses.

OLD TRUSTEE CONTINUED.

ASSIGNMENT OF TONTINE ANNUITY.

ASSIGNMENT *with the Consent of the Grantee's Administratrix* de bonis non *and her Husband, of a* TONTINE ANNUITY, *for the Life of the Vendor's Wife, payable by Trustees, out of an Estate in* IRELAND, *with* BENEFIT OF SURVIVORSHIP.

Parties.

Description of administratrix.

Recital of creation of tontine annuities, charged on lands in Ireland.

THIS INDENTURE, made the day of , in the year of our Lord 18 ; BETWEEN [*vendor*] of, &c. and his wife, (late spinster), of the first part, [*husband of administratrix*] of, &c. and [*administratrix, de bonis non*], his wife (late spinster), which said [*administratrix*] is administratrix of the goods and chattels of [*grantee*], late of in the county of , [*description*] deceased, left unadministered by [*widow*] his widow, and is also executrix of the will of the said [*widow*], of the second part, and [*purchaser*] of, &c. of the third part. WHEREAS, by indentures of lease (*a*) and release, bearing date respectively the

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Lease for year unnecessary for lands in Ireland.

(*a*) A lease or bargain and sale for a year, as a preliminary to a release of lands in IRELAND, is sometimes prepared through inadvertence; but it is unnecessary, because by the Irish statute 9 Geo. II. c. 5. s. 6. entitled "*An act for the more effectual assigning of judgments, and for the more speedy recovery of rents by distress,*" 6th vol. Irish Statutes, 192. after reciting, "*Whereas* it has frequently happened, that purchasers for valuable considerations under deeds of lease and release, have been prevented from recovering their rights, for want of being able to produce the lease for a year, which is often lost or mislaid; IT IS ENACTED "That in all cases the recital of a lease for a year in the deed of release shall be deemed and taken to be full and sufficient evidence of such lease."

By the 7th section, the act was to continue in force until the first day

ASSIGNMENT OF TONTINE ANNUITY.

and days of , 17 , the release being [of three parts, and] made between [*grantor*], of in the county of , in Ireland, esquire, of the first part, [*trustees*] of the second part, and the several other persons whose names are thereunder written as subscribers to the tontine thereinafter mentioned, of the third part, *Certain* tontine annuities or yearly sums, increasing by survivorship, were thereby secured to the said [*trustees*], their heirs and assigns, *In trust* for the several persons parties thereto of the third part; AND were thereby charged on and made issuing and payable out of the rents and profits of certain freehold estates of him the said [*grantor*], in the said county of . AND WHEREAS, by two several certificates or debentures, numbered and , under the hands of the said trustees of the said tontine, bearing date respectively the day of , 17, they the said trustees did certify and declare that the said [*grantee*] had subscribed two shares in the first class of the said tontine, and had named his daughter, the said [*wife of vendor*], (then [*maiden name*]), and [*other nominee*], son of , of aforesaid, his nominees; *And* the said trustees did therefore by the said debentures further certify, that the said [*grantee*], his executors, administrators, and assigns, should in pursuance of the said indenture, receive two several annuities of pounds shillings, by half-yearly payments, with such additional interest from time to time as should accrue by survivorship in the first class of nominees of the said tontine; *One* of such annuities to be payable during the life of the said [*vendor's wife*], (then [*maiden name*]); *And* the other for the life of the said [*other nominee*]. AND WHEREAS the said [*grantee*]

Recital of debentures, whereby grantee became entitled to two annuities with benefit of survivorship.

Recital of grantee's death intestate,

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of May, 1740. And by the Irish Statute 1 Geo. III. c. 3. 7th vol. Irish Statutes, 808, it is made perpetual.

In pleading lease and release in Ireland, sufficient to alledge bringing release into court.

By the 2d section of the latter act IT IS ENACTED, "That in all cases of pleading deeds of lease and release, wherein it may be necessary to alledge the bringing such deeds into court, it shall be sufficient to alledge the bringing into court the deed of release, in which the recital of such lease shall to all purposes whatsoever be as effectual, as producing the same." [See also Vol. III. 165.]

ASSIGNMENT OF TONTINE ANNUITY.

departed this life in the month of , 179 , intestate, leaving his widow the said [*widow*], and two children, namely the said [*vendor's wife*] and [*administratrix*] him surviving: AND on the day of , 179 , the said [*widow*] the widow, obtained letters of administration of the goods and chattels of the said [*grantee*], to be granted to her, by the prerogative court of the Archbishop of Canterbury; AND the said [*widow*], in her life time, parted with her interest in the said two debentures by delivering them to the said [*wife of vendor*] and [*administratrix*], previously to their intermarriages respectively, no assignment thereof being deemed necessary, the same debentures being respectively payable to the bearer thereof. AND WHEREAS, ever since such delivery of the said debentures by the said [*widow*], it was understood and agreed between the said [*vendor*] and his wife, and [*husband of administratrix*] and his wife, that the said annuity payable for the life of the said [*vendor's wife*], should be held and received by her as the separate property of the said [*vendor*] and his wife, and that the said annuity payable for the life of the said [*other nominee*], should be considered and taken as the separate property of the said [*husband of administratrix*] and his wife; and they have ever since received such respective annuities independently of each other, and as their separate and distinct property; but no assignment was ever executed by the said parties for carrying such arrangement into effect. AND WHEREAS the said [*widow*] is dead, having by her will appointed the said [*administratrix*] executrix, who hath since proved the said will in the said prerogative court of Canterbury. AND WHEREAS the said [*administratrix*] did also on the day of , 18 , obtain letters of administration of the goods and chattels of the said [*grantee*], left unadministered by the said [*widow*], to be granted to her by the said prerogative court of Canterbury (*b*). AND WHEREAS the said [*vendor*] and

and grant of administration to his widow,

who delivered debentures as a gift to her two daughters, jointly,

who agreed to hold them in severalty;

but no assignment was made.

Recital of widow's death, and proof of her will by daughter.

Recital of administration to grantee *de bonis non*, granted to daughter.

(*b*) The interest vested in an executor by the will of the deceased, may be continued and kept alive by the wills of the successive executors: so that the executor of A's executor, in however remote a series, is to all intents and purposes the executor and representative of A him

The executor of an executor, *ad infinitum*, represents the first testator.

ASSIGNMENT OF TONTINE ANNUITY.

self; and has the same interest in the goods and chattels of A, as the first and immediate executor. *Hudson* v. *Hudson*, 1 Atk. 461. 2 Bla. Com. 506. Toll. Ex. 243. Noy's Maxims, 103. 5th ed. 231. 9th ed. 3 Bac. Abr. 19. *Executors* (B), 2. 1. pl. 2. [Off. Ex. 258.] But this is to be understood, when the executor proves the will; Palm. 156. Com. Dig. *Administration*, (G); for if the first or any other executor die after administering, and before probate, his executor cannot prove the will of the testator; because he is not named executor to him in the will; no person being competent to prove a will, but he who is named executor in the will; *Wankford* v. *Wankford*, 1 Salk. 309; and administration of the goods of the testator must be granted *cum testamento annexo* to the executor of the executor, if the residue of the goods of the testator were bequeathed by his will to the executor; or otherwise to the residuary legatee, if any; or to the next of kin of the testator. 1 Roll. Abr. 907. pl. 10. *Isted* v. *Stanley*, Dyer, 372. a. (8). *Day* v. *Chapfield*, 1 Vern. 200. 11 Vin. Abr. 67. pl. 10. 20. 27. Godolphin's Orphan's Legacy, pt. 2. *ch.* 30. 230. 4th ed.

But an executor of an executor cannot prove the will of the first testator.

Administration with the will annexed.

But the executor of A's administrator, or the administrator of A's executor, is not the representative of A; Bro. Abr. *administratours, &c.* pl. 7. page 16 a. ed. 1573 *; because the power of an executor is founded upon the special confidence and actual appointment of the deceased; and such executor is therefore allowed to transmit that power to another, in whom he has equal confidence; but the administrator of A, is merely the officer or deputy of the ordinary, prescribed to him by act of parliament, (31 Edw. III. stat. 1. c. 11.) in whom the deceased has reposed no trust at all: and therefore on the death of that officer or deputy, it results back to the ordinary to appoint another. And with regard to the administrator of A's executor, he has clearly no privity or relation to A; being only commissioned to administer the effects of the intestate executor, and not of the original testator. Therefore in both these cases, and whenever the course of representation from executor to executor is interrupted by any one administration, it is necessary for the ordinary to commit administration afresh, *of the goods* of the deceased *not* administered by the former executor or administrator. And this administrator *de bonis non*, is the only legal representative of the deceased in matters of personal property. *Ley* v. *Anderton*, Styl. 225. But he may, as well as an original administrator, have only a *limited* or *special* administration committed to his care, *viz.* of certain specific effects, such as a term of years, and the like; the rest being committed to others. 1 Roll. Abr. 908. (D) pl. 1. *Fawtry* v. *Fawtry*. 1 Salk. 36. pl. 2. 2 Bla. Com. 506.

Executor of administrator, &c.

Limited administration.

* This is the best edition of *Brooke*: and there are not so many abbreviations of the words, as in the other editions.

ASSIGNMENT OF TONTINE ANNUITY.

his wife have contracted and agreed with the said [*purchaser*], for the sale to him of the said tontine annuity, payable during the life of the said [*vendor's wife*], and of all arrears, and all future payments to accrue due in respect thereof, at or for the price or sum of pounds:

Recital of contract for sale.

And agreement of administratrix and her husband to join in assignment.

AND in order legally to assign the same, the said [*husband of administratrix*], and his wife, have agreed to join in the assignment thereof, in manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of pounds of lawful money of Great Britain [and Ireland], to the said [*vendor*] and his wife, with the consent of the said [*husband of administratrix*] and his wife, in hand paid by the said [*purchaser*], at the execution of these presents, the receipt whereof is hereby acknowledged: *And also* in consideration of the sum of ten shillings to the said [*husband of administratrix*] and his wife in hand at the same time paid by the said [*purchaser*], the receipt whereof is hereby acknowledged, *They* the said [*vendor*], and his wife, with the consent of the said [*husband of administratrix*], and his wife, *have*, and each of them *hath* granted, bargained, sold, assigned, transferred, and set over; *And* by these presents *do*, and each of them *doth* grant, bargain, sell, assign, transfer, and set over; *And* the said [*husband*] as the husband of the said [*administratrix*], *And* the said [*administratrix*], as executrix of the will of the said [*widow*], and also as administratrix *de bonis non*, and legal representative of the said [*grantee*], deceased as aforesaid, *And also* so far as respects their own individual rights and interest, at the instance and request, and by and with the privity, consent, and direction, of the said [*vendor*] and his wife, testified by their severally being parties to and executing these presents, *have* and each of them *hath* bargained, sold, assigned, ratified, and confirmed; *And* by these presents *do*, and each of them *doth* bargain, sell, assign, ratify, and confirm unto the said [*purchaser*], his executors, administrators, and assigns, THE said annuity in the first class of the said tontine called " 's tontine," by the said recited certificate or debenture, numbered

Testatum.

Vendor and wife,

and administratrix and husband, assign

tontine annuity.

ASSIGNMENT OF TONTINE ANNUITY.

certified to be payable to the said [*grantee*], his executors, administrators, and assigns, for the life of the said [*vendor's wife*], then [*maiden name*] as aforesaid, with all arrears due thereon, and all such additional interest as shall from time to time accrue by survivorship; together with the said certificate or debenture: AND all the right, interest, benefit, claim, and demand whatsoever of them the said [*vendor*], and his wife, [*husband of administratrix*] and his wife, in their several and respective capacities aforesaid, of, in, to, or out of the said annuity, debenture, and premises, and every part thereof; *Together* with all usual or necessary powers and remedies, in their respective names, for recovering and receiving the same. TO HAVE, hold, receive, and take the said annuity, debenture, and premises hereby assigned, with such benefit of increase by survivorship as aforesaid, unto the said [*purchaser*], his executors, administrators, and assigns, to and for his and their own use and benefit. AND THE SAID [*vendor*], for himself, his heirs, executors, and administrators, and for the said his wife; AND THE SAID [*husband of administratrix*], for himself, his heirs, executors, and administrators, and for the said his wife, *do* hereby covenant and declare to and with the said [*purchaser*], his executors, administrators, and assigns, in manner following, that is to say; that they the said [*vendor*] and his wife, and [*husband of administratrix*] and his wife, have not made, done, or committed any act, deed, matter, or thing whatsoever, whereby or by means whereof the said annuity, debenture, and premises hereby assigned, or any part thereof, are, is, can, shall, or may be impeached, charged, assigned, or incumbered, in any manner howsoever: AND FURTHER, that they the said [*vendor*] and his wife shall and will at any time or times hereafter, upon the reasonable request, costs, and charges of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other acts, deeds, assignments, powers, and authorities in the law as shall be requisite for the better and more effectually assigning the said annuity, debenture, and premises unto the said [*pur-*

With accruer.

All the right, &c.

All powers, &c.

Habendum.

Covenant by vendor for himself and wife.

Covenant by husband of administratrix for himself and wife.

That they have not incumbered.

Covenant by vendor for himself and wife for further assurance.

ASSIGNMENT OF TONTINE ANNUITY.

chaser], his executors, administrators, and assigns, and enabling him and them to receive and recover the same: AND LASTLY, the said [*vendor*], for himself, his heirs, executors, and administrators, doth hereby further covenant with the said [*purchaser*], his executors, administrators, and assigns, that he the said [*purchaser*], his executors, administrators, and assigns, shall receive the said tontine annuity, without any let, suit, trouble, hindrance, or interruption, by any person or persons whomsoever: AND ALSO, that he the said [*vendor*], his executors or administrators, shall and will, on the (tenth) day of (October) and the (tenth) day of (April) in every year, during the life of the said [*wife*], procure proper certificates, to be signed by the minister or churchwardens of the parish in which the said [*wife*] shall be residing, of her being alive: and transmit such certificates, from time to time, to the said [*purchaser*], his executors, administrators, and assigns; and shall and will do all other acts requisite and necessary to enable him and them to receive the said annuity. IN WITNESS, &c.

General covenant by vendor for peaceable enjoyment.

And to transmit certificates of his wife being alive.

ASSIGNMENT OF ANNUITY ON TRUSTS OF INTENDED SETTLEMENT.

ASSIGNMENT *by the Grantee, Upon the Trusts of a Settlement of even Date, previously to the intended Marriage of his Daughter, of an* ANNUITY, *charged on Lands for the Life of the Grantor, and secured by a* DEMISE *to a Trustee, for the Benefit of the Grantee and two other Annuitants, and a* JUDGMENT *confessed, with a* COVENANT *by the Grantor to appear at any* INSURANCE *Office, and to give Notice and pay additional Premiums on going abroad: either with or without a* DECLARATION, *that the Trustee of the Term shall stand possessed of the Premises, Upon Trust to secure the Annuity to the Trustees, Upon the Trusts hereby declared: and* COVENANT *by one of the other Annuitants to produce the Deed creating the Annuity.*

COVENANT TO PRODUCE ANNUITY DEED.

THIS INDENTURE, made the day of in the year of our Lord 18 : BETWEEN [*grantee*] of, &c. of the first part, [*intended husband*] of, &c. of the second part, [*intended wife*] of, &c. (the eldest daughter of the said [*grantee*]) of the third part, [*depositary of deed*] of, &c. of the fourth part, [*trustee*] of, &c. and [*other trustee*] of, &c. of the fifth part (*a*). WHEREAS by an indenture bearing date on or about the day of

Parties.

Recital of grant of annuity.

(*a*) By assigning an annuity upon the trusts of a settlement in this manner, with clauses enabling the trustees to give effectual receipts, the trusts of the settlement are not made known to the grantor or to a purchaser, &c.

Advantages of this mode.

In a similar assignment to the present, the grantor and the trustee of the term should either be parties to, or have notice of the deed. *Vide ante*, 341, *post*, 411.

Grantor and trustee should be parties, or have notice of assignment.

ASSIGNMENT OF ANNUITY, ON TRUSTS OF INTENDED SETTLEMENT.

18 , and made, or expressed to be made, between [*grantor*] of the first part, the said [*depositary*] of the second part, the said [*grantee*] of the third part, [*another annuitant*] of the fourth part, and [*trustee of term*] of the fifth part; In consideration of the sum of thousand pounds paid by ([*agent*] of, &c. as agent for) the said [*grantee*], to the said [*grantor*] as therein mentioned, the said [*grantor*] did give, grant, and confirm unto the said [*grantee*], his executors, administrators, and assigns, *One* clear annual sum or yearly rent charge of hundred and pounds for the natural life of the said [*grantor*]; *To* be issuing and payable out of all the manors or lordships, capital and other messuages, farms, lands, tenements, cottages, and hereditaments thereinafter mentioned to be thereby demised, and every part thereof: and to be paid by four equal quarterly payments, on the day of , the day of , the day of , and the day of , without any deduction whatsoever (the tax or duty on income or property only excepted); and a proportional part of the said annual sum or yearly rent charge of hundred and pounds, up to the day of the decease of the said [*grantor*]: *And* by the said indenture now in recital, the said [*grantor*] did grant unto the said [*grantee*], his executors, administrators, and assigns, the usual powers and remedies of distress and entry, and detention of possession and perception of rents and profits in case the said annual sum or yearly rent charge of hundred and pounds, or any part thereof, should be in arrear: *And* by the said indenture now in recital the said [*grantor*] did covenant with the said [*grantee*], his executors, administrators, and assigns, for the regular payment of the said annual sum or yearly rent charge of hundred and pounds: AND by the said indenture now in recital, the said [*grantor*], for the considerations aforesaid, and in consideration of five shillings to him paid by the said [*trustee*], did grant, bargain, sell, and demise unto the said [*trustee*], his executors, administrators, and assigns, *The* manors or lordships, capital and other messuages, farms, lands, tenements,

Usual powers.

Covenant for payment.

Recital of demise to trustee.

ASSIGNMENT OF ANNUITY, ON TRUSTS OF INTENDED SETTLEMENT.

cottages, and hereditaments therein particularly mentioned and described, situate in the counties of and , and their rights, royalties, members, and appurtenances: *To hold* the same unto the said [*trustee*], his executors, administrators, and assigns, from the day next before the day of the date of the said indenture now in recital, for the term of (ninety-nine years) if the said [*grantor*] should so long live; *Upon* and for the trusts, intents, and purposes therein declared or expressed, of or concerning the same, for better securing the payment of the said annual sum or yearly rent charge: AND by the said indenture now in recital the said [*grantor*] further covenanted with the said [*grantee*], his executors, administrators, and assigns, that he would, when and where required, attend personally at any of the offices of insurance in London or Westminster, so that his life might be insured and kept insured; and upon his leaving, or intending to leave Great Britain, give notice thereof in writing to the said [*grantee*], his executors, administrators, and assigns, one calendar month at least before his departure, in order to prevent the policy of the said annuitant from being voidable; and would in any case of his leaving Great Britain, pay unto the said [*grantee,*] his executors, administrators, and assigns, the additional premium which would be demanded at any of the said insurance offices for insuring any sum on the life of the said [*grantor*], not exceeding pounds, in consequence of his quitting Great Britain, and against the risque of the seas: *And* in the said indenture now in recital is contained a proviso for enabling the said [*grantor*] to repurchase the said annual sum or yearly rent charge of hundred and pounds, upon the trusts therein mentioned. AND WHEREAS the said annual sum or yearly rent charge is further secured by a judgment confessed by the said [*grantor*]. AND WHEREAS the said [*grantee*] hath effected with the (Albion) insurance company an insurance on the life of the said [*grantor*] for the sum of thousand pounds; and that sum is for the annual premium of pounds, assured to be paid to the said [*grantee*], his executors, administrators,

Recital of covenant to appear at any insurance office, and to give notice and pay additional premiums on going abroad.

Recital of power of repurchase.

Reference to judgment.

Recital of policy of insurance.

ASSIGNMENT OF ANNUITY, ON TRUSTS OF INTENDED SETTLEMENT.

or assigns, on the decease of the said [*grantor*], by a policy of assurance under the hands and seals of some of the directors of that company, bearing date on or about the day of one thousand eight hundred and : AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized between the said [*intended husband*] and [*intended wife*]: *And* upon the treaty for the said intended marriage, it was agreed (amongst other things) that the said annual sum or yearly rent charge of hundred and pounds, and the additional premium to be paid as aforesaid to the said [*grantee*], his executors, administrators, and assigns, by the said [*grantor*], in case of his leaving Great Britain, and the monies to be paid or given by the said [*grantor*] for the repurchase of the said annual sum or yearly rent charge in case the same should be repurchased as aforesaid, and the said policy of assurance, and the monies assured thereby, should be assigned to the said [*trustees*], their executors, administrators, and assigns, *Upon* the trusts hereinafter declared or referred to concerning the same. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the said intended marriage, and of the sum of ten shillings of lawful money of Great Britain [and Ireland] to the said [*grantee*] paid by the said [*trustees*] at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *He* the said [*grantee*], with the privity and approbation of the said [*intended husband*] and [*intended wife*], (testified respectively by their being parties to and sealing and delivering these presents) *hath* granted, bargained, sold, and assigned; *And* by these presents *doth* grant, bargain, sell, and assign unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT the said annual sum or yearly rent charge of hundred and pounds, so granted and secured by the said recited indenture, and judgment, as hereinbefore is mentioned; *And* all future payments thereof; *And also* the said judgment, policy of assurance, and the additional premium, which, in pursuance of the covenant for that purpose contained in the hereinbefore recited indenture, is to be paid to the said [*grantee*], his

Recital of intended marriage, and agreement to settle annuity, &c.

Testatum.

Grantee, with the approbation of his daughter and her intended husband,

assigns

annuity,

future payments, judgment, policy of insurance, and additional premium.

executors, administrators, and assigns, by the said [*grantor*], in case of his leaving Great Britain; *And* all the powers and remedies of him the said [*grantee*], for recovering and enforcing the payment thereof respectively; *And also* all monies which shall be paid or given by the said [*grantor*] for the repurchase of the said annual sum or yearly rent charge, in case the same shall be repurchased under or by virtue of the proviso for that purpose contained in the hereinbefore recited indenture; *And* the monies assured thereby: AND all the right, title, interest, possibility, property, claim, and demand whatsoever, both at law and in equity, of him the said [*grantee*], in, to, or out of the said annual sum or yearly rent charge, additional premium, and other monies and premises, hereby assigned or intended so to be, and every of them and every part thereof. TO HAVE, hold, receive, and take, the said annual sum or yearly rent charge, additional premium, and other monies and premises, hereby assigned or intended so to be, and every of them, and every part thereof respectively, unto the said [*trustees*], their executors, administrators, and assigns, UPON and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as are or shall be expressed and declared of and concerning the same, in and by an indenture already prepared and engrossed, and bearing or intended to bear even date with these presents, and made or intended to be made between the said [*grantee*] of the first part, the said [*intended husband*] of the second part, the said [*intended wife*] of the third part, and the said [*trustees*] of the fourth part, being the settlement made previously to and in consideration of the said intended marriage between the said [*intended husband*] and [*intended wife*]. ADD *power of attorney from* [*grantee*] *to* [*trustees*], to ask, demand, distrain, sue for, recover, and receive, of and from all and every such persons and person who are, is, or shall or may be liable to pay the same respectively, the said annual sum or yearly rent charge, additional premium, and other monies hereby assigned or intended so to be, &c. *ut ante*, 360. PROVIDED ALWAYS *and it is hereby agreed and declared* between and by the parties to these presents, that at any time (after the decease of the

ASSIGNMENT OF ANNUITY, ON TRUSTS OF INTENDED SETTLEMENT.

All powers and remedies.

Monies for repurchase.

All the right.

Habendum of the annuity, &c.

Upon trusts of settlement.

Power of attorney to receive and recover annuity, &c.

Power to trustees to sell annuity;

ASSIGNMENT OF ANNUITY, ON TRUSTS OF INTENDED SETTLEMENT.

said [*grantee*],) it shall be lawful for the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, with the consent in writing of the said [*intended husband*] and [*intended wife*], or the survivor of them; and after the decease of such survivor, at the discretion of the said [*trustees*], or the survivor of them, &c. absolutely to sell and dispose of the said annual sum or yearly rent charge and policy, hereby assigned or intended so to be, and the monies assured by the said policy, either by public sale or private contract, to any person or persons willing to purchase the same, at the best price that can be had or gotten for the same; *And* for the purpose of completing such sale, it shall be lawful for the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, to enter into, do, and execute, all such contracts, acts, and deeds, as to them or him shall seem necessary and proper: AND *it is hereby agreed and declared*, that the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, shall stand and be possessed of the monies to arise from such sale, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as are or shall be expressed and declared of and concerning the same, in and by the aforesaid indenture, bearing or intended to bear even date with these presents. PROVIDED ALWAYS, *and it is hereby agreed and declared* between and by the parties to these presents, that it shall be lawful for the said [*trustees*], and the survivor of them, and the executors, administrators, or assigns of such survivor, to sign and give any receipt or receipts in writing, for any sum or sums of money which shall or may be payable to them or him by virtue of this present indenture; *And* that the person or persons paying any such sum or sums of money as aforesaid, shall not afterwards be answerable or accountable for the mis-application or non-application, or be in any wise bound or concerned to see to the application of the money in such receipt or receipts expressed and acknowledged to be or to have been received, or to enquire into the necessity or propriety of the sale, which may be made in pursuance of

and stand possessed of purchase monies upon trusts of settlement.

Indemnity clause to purchasers.

ASSIGNMENT OF ANNUITY ON TRUSTS OF INTENDED SETTLEMENT.

the power hereinbefore contained. And the said [*grantee*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*trustees*], their executors, administrators, and assigns, in manner following, that is to say; that the said annual sum or yearly rent charge is well, effectually, and sufficiently secured in the manner hereinbefore mentioned and recited: And that he the said [*grantee*], hath not at any time heretofore released, assigned, or incumbered the said annual sum or yearly rent charge, additional premium, and other monies and premises, hereby assigned or intended so to be: And that he the said [*grantee*], now hath in himself good right, full power, and lawful and absolute authority, to assign the said annual sum or yearly rent charge, additional premium, and other monies, hereby assigned unto the said [*trustees*], their executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents: And that he the said [*grantee*], shall not nor will at any time or times hereafter, revoke, annul, or make void the aforesaid power or authority hereby given to the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor; *Or* make, do, or execute, or knowingly or willingly permit or suffer any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof, the said [*trustees*], their executors, administrators, or assigns, may, can, or shall be in any wise prevented or hindered from having, receiving, and taking, the said annual sum or yearly rent charge, or additional premium and other monies and premises, hereby assigned, or intended so to be, or any of them or any part thereof respectively, Upon, and for the trusts, intents, and purposes, hereinbefore declared or referred to, of and concerning the same: And further, that he the said [*grantee*], his executors and administrators, shall and will at any time or times hereafter, upon every reasonable request of the said [*trustees*], their executors, administrators, or assigns, but at the expense of the said [*grantee*], his executors or administrators, make, do, and execute, or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, matters, and

Covenant by grantee, that annuity is well secured;

that he has not incumbered;

that he has good right to assign;

that he will not revoke power.

or prevent trustees from receiving annuity, &c.

For further assurance.

ASSIGNMENT OF ANNUITY ON TRUSTS OF INTENDED SETTLEMENT.

things, for the better and more effectually assigning, assuring, and confirming the said annual sum or yearly rent charge, additional premium, and other monies and premises hereby assigned or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns, and also for enabling them to recover and enforce the payment thereof respectively, Upon, and for the trusts, intents, and purposes hereinbefore declared or referred to, of and concerning the same; *As* by the said [*trustees*], their executors, administrators, or assigns, or their or any of their counsel in the law, shall be reasonably devised, advised, and required (*b*). WHEREAS the hereinbefore re-

Recital, that depositary has the deed creating annuity.

TRUSTEE OF TERM A PARTY.

(*b*) If the trustee of the term be a party, add,

Declaration, that trustee shall stand possessed of premises, Upon trust to secure annuity to trustees, Upon trusts of settlement, &c.

"AND THIS INDENTURE FURTHER WITNESSETH, *and it is hereby declared and agreed* by and between the said parties to these presents, as far as they are respectively interested; [*and* the said [*trustee*], at the instance and request of the said [*grantee*], doth hereby for himself, his heirs, executors, and administrators, covenant and agree to and with the said [*trustees*], their executors, administrators and assigns,] That he the said [*trustee*], his executors, administrators, and assigns, shall and will from time to time, and at all times hereafter, during the continuance of the said term of (ninety-nine) years, determinable as aforesaid, stand possessed of and be interested in the said lands and hereditaments, subject as aforesaid; UPON THE TRUSTS, and to and for the ends, intents, and purposes, expressed, declared, and contained, of and concerning the same, in and by the said in part recited indenture of the day of 18 ; *But so nevertheless*, that all benefit and advantage of the same trusts in favour of the said [*grantee*], his executors, administrators, and assigns, shall henceforth belong to, and be received, and enjoyed by, the said [*trustees*], their executors, administrators, and assigns; *Upon*, and for the trusts, ends, intents, and purposes, hereinbefore declared or referred to, of and concerning the same. AND THE SAID [*trustee*], for himself, his heirs, executors, and administrators, doth hereby covenant and declare with and

Covenant by trustee, that he has not incumbered.

ASSIGNMENT OF ANNUITY ON TRUSTS OF INTENDED SETTLEMENT.

cited indenture of the day of , one thousand eight hundred and , is in the custody or possession of the said [*grantee of another annuity charged on the same premises, and* depositary *of title-deeds*], to whom a like annual sum or yearly rent charge of hundred and pounds, during the life of the said [*grantor*], was granted and secured by the same indenture; And he hath agreed to enter into the covenant hereinafter contained in regard to the same. Now this indenture further witnesseth, that in pursuance and performance of the said agreement, and in consideration of the premises, he the said [*depositary*], doth hereby for himself, his executors, administrators, and assigns, covenant, promise, and agree, with and to the said [*trustees*], their executors, administrators, and assigns, that unless hindered or prevented by fire or some other inevitable accident, he the said [*depositary*], his executors, administrators, or assigns, shall and will from time to time, and at all times hereafter while the said last mentioned indenture shall remain and be in his or their possession or controul, unless he or they shall be absent from the place of his or their usual abode, and then and so soon after as he or they shall return thereto, upon every reasonable request of the said [*trustees*], their executors, administrators, or assigns, but at the expense of the trust monies, and premises, and on reasonable notice in writing being given to him or them, produce and shew forth, or cause to be produced and shewn forth, unto the said [*trustees*], their executors, administrators, or assigns, or their or any of their counsel, attornies, agents, or solicitors, or at any trial or hearing in any court

Covenant by depositary to produce annuity deed;

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to the said [*trustees*], their executors, administrators, and assigns, that he the said [*trustee*] hath not at any time heretofore made, done, executed, committed, or knowingly or willingly suffered any act, deed, matter, or thing whatsoever, whereby or wherewith, or by reason or means whereof the said lands and hereditaments, or the said term of (ninety-nine) years, determinable as aforesaid therein, or any part thereof respectively, are, is, can, shall, or may be impeached, charged, incumbered, or in any way affected."

ASSIGNMENT OF ANNUITY ON TRUSTS OF INTENDED SETTLEMENT.

of law or equity, or at any commission for the examination of witnesses, or otherwise as occasion shall require, the hereinbefore recited indenture of the day of , one thousand eight hundred and , for the better evidencing, maintaining, and proving the title of the said [*trustees*], their executors, administrators, and assigns, of, in, and to the said annual sum or yearly rent charge, additional premium, and other monies and premises secured or made payable, by or in pursuance of that indenture, and hereby assigned or intended so to be, or any part thereof respectively: AND ALSO shall and will from time to time, and at all times hereafter, at the like request and expense, permit copies to be made and taken of the said indenture, by any person or persons whomsoever: AND ALSO shall and will in the mean time keep and preserve the same indenture undefaced, unobliterated, and uncancelled (*c*). IN WITNESS, &c.

Permit copies to be taken.

And keep deed undefaced.

(*c*) *Vide ante*, 2. (*b*).

ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

ASSIGNMENT *of an* ANNUITY, *charged upon the Interest of Money in the Funds, and upon a Reversion in Fee, and a* POLICY OF INSURANCE, *upon the Life of the Grantor, for the Benefit of an Infant, the Child of the Grantor, out of whose Money the same had been paid off, Upon Trusts declared by another Indenture of even Date.*

THIS INDENTURE, made the day of in the year of our Lord 18 ; BETWEEN [*grantee*], of, &c. of the first part, [*grantor*] of, &c. widow and relict of [*husband*], late of, &c. deceased, of the second part, [*cestui que trust*], an infant of the age of years, (daughter of the said [*grantor*] by her late husband, the said [*husband*],) of the third part, and [*three trustees*], of, &c. of the fourth part. WHEREAS, by indenture bearing date on or about the day of , one thousand eight hundred and , and made between the said [*grantor*], by her then name and description of [*former name*], of, &c. widow, of the one part, and the said [*grantee*] of the other part, *It was witnessed*, that in pursuance of an agreement therein recited, and in consideration of the sum of thousand pounds, to the said [*grantor*] paid by the said [*grantee*], she the said [*grantor*], Did grant, bargain, sell, and confirm unto the said [*grantee*], his executors, administrators, and assigns, during the natural life of her the said [*grantor*], *One* annuity or clear yearly sum of hundred and pounds, to be issuing out of and charged upon a certain annual sum of hundred and pounds bank short annuities, which were to continue for the term of twenty-nine years,

Parties.

Recital of grant of annuity for life of grantor, charged upon dividends and reversion in fee.

ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

from the twenty-sixth day of January, 1779 (which said annuities have since ceased); and upon all such dividends, interest, or annual proceeds of certain other bank annuities thereinbefore mentioned, or such other funds or securities, in or upon which the same or any part thereof had been or might be thereafter invested, as the said [*grantor*] then was, or should or might become interested in or entitled unto; and upon a moiety of the reversion in fee simple, of and in certain messuages, &c. thereinbefore mentioned, and to which same moiety the said [*grantor*] was entitled in manner thereinbefore mentioned and recited, and the rents, issues, and profits of the same moiety: *To hold* the same annuity unto the said [*grantee*], his executors, administrators, and assigns, during the natural life of the said [*grantor*], to be paid by equal quarterly payments on the day of , &c. in every year: *And* the said [*grantor*] did thereby appoint the said [*grantee*], his executors, administrators, and assigns, to be her attorney and attornies, with full power and authority to recover and receive the said annuity from the trustee or trustees for the time being, of the settlement or wills thereinbefore recited, out of the aforesaid bank short annuities, and the said dividends, interest, or annual proceeds of the said other stocks, funds, and securities, and the rents and profits upon which the said annuity was so charged as aforesaid: *And* by the now reciting indenture, powers of entry and distress upon and perception of the rents and profits of the said moiety, hereditaments, and premises, thereby charged as aforesaid, are given to the said [*grantee*], his executors, administrators, and assigns, for the better securing the aforesaid annuity: *And* the said [*grantor*] did thereby for herself, her heirs, executors, and administrators, covenant with the said [*grantee*], his executors, administrators, and assigns, to pay to him and them the said annuity thereby secured, at the times and in the manner thereinbefore mentioned and appointed for payment thereof: *And* in the now reciting indenture, there was contained a proviso declaring that in case the said [*grantor*] should at any time be desirous to repurchase the said annuity, and should give three months notice in writing under her hand to the said [*grantee*], his executors, administrators, or

Recital of power of attorney to receive and recover dividends and rents.

Recital of powers of entry and distress.

Recital of covenant for payment of annuity.

Recital of proviso for repurchase.

ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

assigns, of such her intention, and should at the time fixed in such notice (which should be a day whereon some quarterly payment of the said annuity should become due), pay to the said [*grantee*], his executors, administrators, or assigns, the sum of thousand pounds over and above such quarterly payment, and all arrears of the said annuity, then, and in such case, the future payment of the said annuity to the said [*grantee*], his executors, administrators, and assigns, should cease and determine. AND WHEREAS the said [*grantee*], at the time of the execution of the aforesaid indenture, took out a policy of insurance on the life of the said [*grantor*], in the office of the (society for equitable assurance on lives and survivorships,) which said policy is dated the day of , 18 , and numbered , and the life of the said [*grantor*] was thereby insured at the sum of thousand pounds. AND WHEREAS the said [*grantor*] intermarried with her said late husband the said [*husband*], in or about the year 18 ; *And* the said [*husband*] departed this life in or about the month of June, 18 . AND WHEREAS, in or about the month of 18 , the sum of thousand pounds was paid to the said [*grantee*], for which he signed a receipt, acknowledging the same to be in full for the repurchase of the aforesaid annuity ; *And* at the same time the sum of hundred pounds shillings and pence, being the amount of a benefit which had arisen on the said policy from the time of taking out the same (*a*), was also paid to the said [*grantee*], as the purchase money for the said policy ; *And* the said several sums of thousand pounds and

Recital of policy of assurance on grantor's life.

Recital of grantor's intermarriage, and death of her husband.

Recital of repurchase of annuity.

Of consideration paid for benefit of policy.

And that the same was paid out of monies belonging to the infant child of the grantor.

(*a*) Before the grantee of an annuity effects an assurance on the life of the grantor, he should ascertain whether the office will *at any time* repurchase his interest in the policy: in the above instance, as the insurance had been effected for some years, several hundred pounds were paid to the grantee for the benefit of the policy, which was very advantageous to him, as he also received the annuity, and the full sum originally paid for the purchase. Some of the insurance offices will not repurchase the benefit of the policy, unless it has been granted for a certain number of years; others of them will repurchase at any time.

Grantee should inquire whether insurance office will purchase benefit of policy.

ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

hundred pounds shillings and pence, were paid out of monies belonging to the said [*cestui que trust*], but no assignment hath hitherto been made by the said [*grantee*] of the said annuity, or of the aforesaid policy. AND WHEREAS the said [*grantee*] hath, at the request of the said [*grantor*], and of her said daughter the said [*cestui que trust*], agreed to assign the said annuity and all arrears now due, and hereafter to accrue due in respect thereof, and also the aforesaid policy of insurance, and all benefit and advantage thereof, unto the said [*trustees*], as trustees thereof, Upon such trusts and in such manner as hereinafter is expressed; NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement in this behalf, and in consideration of the premises, and of ten shillings to the said [*grantee*] paid by the said [*trustees*] upon the execution of these presents, the receipt whereof is hereby acknowledged, *He* the said [*grantee*], at the request, and by the direction of the said [*grantor*] and [*cestui que trust*], (testified by their severally sealing and delivering these presents,) *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *doth* bargain, sell, assign, transfer, and set over, unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT, the said annuity, clear yearly sum or yearly rent charge of hundred and pounds, secured as aforesaid by the hereinbefore recited indenture of the day of , 18 : AND all arrears now due, and hereafter to become due in respect of the same annuity: AND all and singular the powers, authorities, and remedies whatsoever, by the same indenture given and granted for recovering and enforcing the payment thereof; *And* the covenants and agreements therein contained for securing the regular payment of the same annuity, and such arrears thereof as aforesaid: *And also* ALL THAT the aforesaid policy of assurance, and all present and future benefit and advantage thereof, and all monies whatsoever, recoverable by virtue of the same policy: AND all the right, title, interest, trust, property, claim, and demand whatsoever, both at law and in equity, of him the said [*grantee*], of, in, to, or out of said annuity, arrears, policy, monies, and premises hereby assigned, or expressed or

No assignment previously made by grantee.

Recital of agreement by grantee to assign annuity and policy to trustees.

Testatum.

Assignment by grantee, at request of grantor and *cestui que trust*, to trustees of

annuity.

Arrears.

All powers, &c.

Policy.

All the right.

ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

intended so to be, and every or any part thereof; To HAVE, hold, receive, take, and enjoy the said annuity, arrears, policy, monies, and all and singular other the premises hereby assigned or expressed, or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns, from the day of last past, for and during the natural life of the said [*grantor*], as fully, amply, absolutely, and beneficially, to all intents and purposes whatsoever, as he the said [*grantee*], his executors or administrators, could have enjoyed, received, and taken the same, if these presents had not been made, and if the said [*grantee*] had not received the said several sums of thousand pounds, and hundred pounds shillings and pence, so paid to him as hereinbefore is mentioned and recited; *Nevertheless, Upon* and for the trusts, intents, and purposes, and subject to the powers and provisoes, declared and expressed of and concerning the same, in and by a certain indenture already prepared and engrossed, and intended to bear even date with these presents, and to be made between the said [*grantor*] of the first part, the said [*cestui que trust*] of the second part, and the said [*trustees*] of the third part; And upon or for no other trust, intent, or purpose whatsoever. AND the said [*grantee*] doth hereby make, ordain, constitute, and appoint the said [*trustees*], their executors, administrators, and assigns, to be his true and lawful attornies and attorney, irrevocably, in the name or names of him the said [*grantee*], his executors or administrators, but upon and for the trusts aforesaid, to ask, demand, distrain, sue for, recover, and receive of and from every or any person or persons who is or are, or shall or may be interested or liable to pay the same respectively, the said annuity, arrears, policy, monies, and premises hereby assigned, or expressed or intended so to be, and all and every other sum or sums of money due or to become due under or by virtue of the said in part recited indenture and policy of insurance, or either of them, and every or any part or parts thereof respectively; AND on receiving the same, or any part thereof respectively, in the name or names of him the said [*grantee*], his executors or administrators, to make, execute, and give good and suffici-

Habendum.

Upon trusts declared by indenture of even date.

Power of attorney to receive and recover annuity, &c.

ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

ent releases and discharges for the same; And for all or any of the purposes aforesaid, from time to time, to nominate and appoint one or more attorney or attornies under them the said [*trustees*], their executors, administrators, or assigns, and to revoke, alter, or vary such nomination and appointment at their or his pleasure; And generally, to do and execute all and every such further and other lawful acts and things, for recovering and receiving the same annuity, arrears, policy, monies, and premises hereby assigned or mentioned, or intended so to be, as he the said [*grantee*], his executors or administrators, could or might have done in the premises; *He* the said [*grantee*] hereby allowing, ratifying, and confirming, and agreeing to allow, ratify, and confirm, all and whatsoever the said [*trustees*], their executors, administrators, or assigns, shall lawfully do or cause to be done in the premises by virtue of these presents. And the said [*grantee*], doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustees*], their executors, administrators, and assigns, that he the said [*grantee*] hath not at any time heretofore assigned or set over the said annuity, arrears, policy, monies, and premises hereby assigned or expressed, or intended so to be, or released, or discharged the same, or any part thereof respectively; And that he the said [*grantee*], now hath in himself good right and lawful authority to assign the same annuity, arrears, policy, and premises unto them the said [*trustees*], their executors, administrators, and assigns, *Upon* the trusts and in manner aforesaid, according to the true intent and meaning of these presents: And that he the said [*grantee*], his executors or administrators, shall not, nor will at any time hereafter, without the consent in writing of the said [*trustees*], their executors, administrators, or assigns, alter, revoke, or annul, all or any of the powers or authorities hereinbefore contained and given to the said [*trustees*], their executors, administrators, and assigns: And that it shall and may be lawful to and for the said [*trustees*], their executors, administrators, and assigns, to receive and take the said annuity, and other the monies hereby assigned, or intended so to be, when and as the same shall respectively become due and payable, without any let, suit,

Covenant by vendor that he hath not assigned annuity, &c.

For title.

Not to revoke powers.

For peaceable enjoyment.

ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

or interruption whatsoever, of, from, or by him the said [*grantee*], his executors or administrators: And free and clear of and from all charges and incumbrances whatsoever made, done, and committed, and to be made, done, and committed by him the said [*grantee*], his executors or administrators: And further, that he the said [*grantee*], his executors or administrators, shall and will from time to time, and at all times hereafter, upon the reasonable request, and at the costs and charges of the said [*trustees*], their executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, assignments, letters of attorney, and other assurances in the law whatsoever, for the further, better, more perfectly, and absolutely assigning and assuring the said annuity, arrears, policy, monies, and premises hereby assigned or expressed, or intended so to be, and every part thereof, unto the said [*trustees*], their executors, administrators, and assigns, or for better enabling them or him to recover and receive the same, *As* by the said [*trustees*], their executors, administrators, or assigns, or their or his counsel in the law, shall be reasonably devised or advised and required (*b*). In witness, &c.

Free from incumbrances. For further assurance.

(*b*) In the above deed, or in the deed referred to, there should be inserted a power, enabling the trustees to sell the annuity and policy, and to lay out the money in the funds, &c. *Vide ante*, 408.

Trustees should have power of sale.

ASSIGNMENT OF ANNUITY AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

ASSIGNMENT *of an* ANNUITY, BOND, WARRANT OF ATTORNEY, *and* JUDGMENT, *and a* TERM FOR YEARS, *on a* REPURCHASE, *to two separate Trustees,* In trust *for the Grantor; either by Indorsement on the Grant, or by another Deed.*

THIS INDENTURE, made the day of , [in the year of the reign of our sovereign Lord *George* the *Fourth*, by the grace of God, of the united kingdom of Great Britain and Ireland, King, Defender of the Faith and] in the year of our Lord Christ, one thousand eight hundred and ; BETWEEN (*a*) [*grantee*] of, &c. of the first part, [*trustee of term*] of, &c. of the second part, Sir [*grantor*] of, &c. baronet, (late esquire) of the third part, [*assignee of annuity*] of, &c. of the fourth part, and [*assignee of term*] of the fifth part. (WHEREAS by a certain indenture bearing date on or about the day of , one thousand eight hundred and , and made or mentioned to be made between the said Sir [*grantor*], (then esquire), of the first part, the said [*grantee*] of the second part, and the said [*trustee*] of the third part, *It is witnessed*, that in consi-

Parties.

Recital of

BY INDORSEMENT.

(*a*) If the assignment be made by indorsement on the grant, instead of describing the persons of the first, second, and third parts, say,

"the within named [*grantee*], of the first part, the within named [*trustee,*] of the second part, the within named [*grantor*], now Sir [*grantor*], baronet, of the third part, and [*assignee*]," &c. *ut supra.*

In which case omit the recitals included in parentheses, and begin "WHEREAS, &c." *the recital of contract for repurchase,* post, 423.

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deration of the sum of thousand and pounds, by the said [*grantee*] paid to the said Sir [*grantor*], *he* the said Sir [*grantor*] did grant, bargain, sell, and confirm unto the said [*grantee*], her executors, administrators, and assigns, *One* annuity or clear yearly sum of hundred and pounds, to be paid and payable for and during the term of (ninety-nine) years, if the said Sir [*grantor*], should so long live; and to be charged upon, and yearly issuing out of all and singular the manor, messuages, lands, tenements, rectories, tithes, rent charges, and hereditaments, situate, lying, and being, in the counties of and , and devised by the will of [*testator*], of, &c. deceased; a recital or particular of which was annexed by way of schedule to an indenture or deed of receivership, bearing even date with the said indenture, and by which [*receiver*], of, &c. was appointed receiver of the rents and profits of the said estates, on behalf of the several persons who were purchasers of annuities from the said Sir [*grantor*]: *To hold* the same unto and by the said [*grantee*], her executors, administrators, and assigns, for and during the said term of (ninety-nine years, if the said Sir [*grantor*] should so long live (*Subject* as therein mentioned); and the said annuity to be paid by equal quarterly payments, as therein mentioned, without any deduction or abatement whatsoever: AND by the said indenture it was declared, that if the said Sir [*grantor*], should depart this life on any other day than one of the said quarterly days of payment of the said annuity hereinbefore referred to, then a proportionable part of the said annuity or yearly sum of hundred and pounds, should be paid to the said [*grantee*], her executors, administrators, and assigns, immediately after the decease of the said Sir [*grantor*], for the time which he should have lived of the then current quarter of a year: AND *it was further witnessed*, that for the considerations aforesaid, and for the better securing the payment of the said annuity, *he* the said Sir [*grantor*], at the request and upon the nomination of the said [*grantee*], did grant, bargain, sell, and demise, unto the said [*trustee*], his executors and administrators, *All those* the manors, messuages, lands, tenements, hereditaments, and all and sin-

grant of annuity for ninety-nine years, if grantor should so long live,

charged upon manors, &c. mentioned in deed of receivership of even date.

Habendum.

With proportionate payment.

Recital of demise to trustee of parcels.

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gular other the premises thereby charged with the payment of the said annuity or yearly sum of hundred and pounds, with the appurtenances, *To hold* the same unto the said [*trustee*], his executors, administrators, and assigns, for the term of (one hundred and fifty) years, to commence from the day next before the day of the date of the now reciting indenture; *Upon* the trusts therein mentioned, for the better and more effectually securing the payment of the said annuity: AND in the said indenture is contained a power enabling the said Sir [*grantor*] to repurchase the said annuity on the terms and conditions therein mentioned and expressed. AND WHEREAS the said Sir [*grantor*] hath contracted and agreed with the said [*grantee*], for the repurchase of the said annuity or clear yearly sum of hundred and pounds, granted and secured to her by the (*b*) (said recited) indenture for the sum of thousand hundred and pounds: AND the said Sir [*grantor*], being desirous of keeping on foot the said annuity and the several securities for the same, hath requested the said [*grantee*] to assign and make over the said annuity or yearly sum of hundred and pounds, and the several securities for the same, and all benefit and advantage thereof, unto the said [*assignee of annuity*], his executors, administrators, and assigns, Upon the trusts hereinafter mentioned or referred unto; which she hath contracted and agreed to do: AND it hath been also agreed that the said [*trustee*] shall assign all the now residue and remainder of the (*c*) (said) term of (one hundred and fifty) years, and the several manors, hereditaments, and premises, therein comprised, unto the said [*assignee of term*], his executors, administrators, and assigns, Upon the trusts and in the manner hereinafter also mentioned. AND WHEREAS, all arrears of the said annuity or yearly sum of

Habendum for years.

Upon trusts for securing annuity.

Power to repurchase.

Recital of contract for repurchase.

Recital of grantor's desire to keep annuity and term on foot, and grantee and trustee's consent thereto.

Recital that arrears have been paid;

BY INDORSEMENT.

(*b*) If by indorsement, say, "within written"

BY INDORSEMENT.

(*c*) If by indorsement, say, "within mentioned"

hundred and pounds, have been paid and discharged by the said Sir [*grantor*] up to the day of the date of these presents, as she the said [*grantee*] doth hereby admit, acknowledge, and declare; (*But* the said recited indenture hath been lost or destroyed, and cannot now be found). Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for and in consideration of the premises, and of the sum of thousand hundred and pounds of lawful money of Great Britain [and Ireland] to the said [*grantee*] in hand, at or before the sealing and delivering of these presents, well and truly paid by the said Sir [*grantor*]; the receipt of which sum of thousand hundred and pounds, being in full for the absolute repurchase of the said annuity or yearly sum of hundred and pounds, so granted and secured as (*d*) (aforesaid), she the said [*grantee*], doth hereby admit and acknowledge; and of and from the same and every part thereof, doth acquit, release, and for ever discharge the said Sir [*grantor*], his heirs, executors, and administrators, and every of them, by these presents; *And also* for and in consideration of the sum of ten shillings of like lawful money, to the said [*grantee*] in hand also well and truly paid by the said [*assignee of annuity*], the receipt whereof is hereby acknowledged, *She* the said [*grantee*], at the request and by the direction of the said Sir [*grantor*], testified by his executing these presents, *hath* (*e*) bargained,

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but that indenture hath been lost.

Testatum.

Consideration.

Nominal consideration.

Assignment by grantee by direction of grantor to assignee.

(*d*) If by indorsement, say,
"in the within written indenture is mentioned,"

BY INDORSEMENT.

(*e*) It having been supposed, that the word *grant* in any conveyance will create an *implied warranty*, trustees, and persons acting in the character of trustees, such as executors and administrators who are not beneficially interested in the purchase money, mortgagees, annuitants, and other incumbrancers who have been paid off, are frequently advised not to convey by the word *grant*. 4 Cru. Dig. 433. 2d ed.

Trustees, &c. frequently advised not to convey by the word *grant*.

Perkins's "profitable book" says, the word *dedi* comprehends the effect and force of the word *concessi*, and more: because *dedi* in a feoffment comprehends in it a warranty against the feoffor, which *concessi* does not. Perk. French ed. 26 a. s. 124. See also Noy's Maxims, 139. 5th ed. 261. 262. 9th ed. And Lord Coke, in the chapter on

Perkins, Coke, and Butler of opinion that *grant* does not imply a warranty.

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warranty, says, a warranty in deed, or an express warranty, is created only by the word *warrantizo;* but warranties in law, or implied warranties, are created by many other words; and therefore they are called warranties in law, because, in judgment of law, they amount to a warranty, without the word *warrantizo;* as *dedi* is a warranty in law to the feoffee and his heirs during the life of the feoffor, but *concessi* in a feoffment or fine implies no warranty. Co. Litt. 384. b. Mr. Butler, in a note to this passage, says, what is said in this place, and the determination of the judges in *Nokes'* case, 4 Rep. 80. and lord chief-justice Vaughan's argument in *Hayes* v. *Bickerstaff*, in his Reports, page 126, should remove the scruples too often entertained on the part of trustees, respecting the propriety of their conveying by the word *grant.* From the passages here referred to, it most clearly appears, that the word *grant*, when used in the conveyance of an estate of inheritance, does not imply a warranty; and that if it did, the insertion of any express covenant on the part of the grantor, would qualify and restrain its force and operation within the import and effect of that covenant, as the law, when it appears by express words how far the parties designed the warranty should extend, will not carry it farther by construction. There is therefore no reasonable ground for trustees objecting to convey by the word *grant;* but serious objections may be raised in some cases to purchasers taking a conveyance from them without it. These are stated in the following passage from Bridgman's Complete Conveyancer, vol. I. 323.—" Sir Jeffrey Palmer's resolution concerning the words *give* and *grant* in a conveyance. Sir, I conceive that care ought to be taken in a conveyance, of what nature soever it be, that there be not therein *give* and *grant;* for they imply a *general warranty*, and shall not be qualified by the *special warranty* following; as hath of late been thrice adjudged. H. T.—Sir Jeffrey Palmer's answer. *Give* implies a *personal warranty*, and so is not always used. The word *grant*, in a lease for years, is a *covenant in law;* or (as you may call it) a *general warranty*, if it be not qualified by a *covenant* or *warranty in fait:* but if there be a *covenant* or *warranty in fait*, then it is restrained to the words of the *covenant* subsequent. But in an *estate of inheritance* where the *fee* passeth, there the word *grant* is neither a *covenant in law*, nor *warranty*. For if it should be a *covenant in law*, or *warranty* in itself, it would be there restrained and qualified by the *warranty* and *covenants in fait*. And a *deed* to pass an *inheritance* where *common* is, cannot be without it; for if it be *common in gross*, it cannot pass by the livery, but must pass by the word *grant*. And I never yet saw a *feoffment* without it. Jeffrey Palmer." This dictum of sir Jeffrey Palmer has been sometimes cited to prove that it is not safe for pur-

An express covenant restrains an implied warranty.

No reasonable ground for trustees objecting to convey by the word *grant;* objections in some cases to purchasers taking a feoffment without it.

Sir Jeffrey Palmer's opinion on the effect of the words *give* and *grant*.

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chasers to take a conveyance by lease and release, or bargain and sale enrolled, if the conveyance be from the trustees, and they do not convey by the word *grant*. It is said that commons, or advowsons, or other things which be in grant, will not, if they are severed from the inheritance, pass without the word *grant*. But this is a mistake, and by no means warranted by sir Jeffrey Palmer's dictum, which evidently applies only to conveyances by feoffment; in which case commons in gross, &c. lying in grant would not pass by the livery, and therefore without the word *grant*, or some other word of a similar operation, would not pass by the charter of feoffment. In the case of a lease and release, there is no doubt but that any thing which lies in *grant*, will vest in the vendee, by the lease for a year, and that a release, without the word *grant*, would operate by way of enlargement to give the releasee the fee. So in the case of a bargain and sale enrolled, any thing which lies in grant will vest in the bargainee by the statute of uses, without the word grant. Upon the whole therefore there is no such peculiar operation in this famous monosyllable, as to make it either dangerous for a trustee to convey by it, or essential for a purchaser to require it.

The word *grant* not necessary in a lease and release, or in a bargain and sale enrolled.

Conclusion.

How a *covenant* shall be expounded with regard to the context, or to synonimous or other words, see Com. Dig. *Covenant*, (D.) 6 Vin. Abr. 406. *Covenant* (L. 4.)

Covenant expounded by the context.

To explain more fully, what is said above, it may be proper to state at length the operation of the word "grant" or "give," in conveyances of estates in fee simple, in gifts in tail, in leases for life, and in leases for years.—1*st. As to the operetion of the word "grant" or "give," in conveyances of estates in fee simple*, it is to be observed, that, till the practice of subinfeudation was established by the statute *quia emptores terrarum*, lands might be granted, either to be held of the grantor himself, or to be held of the chief lord of the fee. When they were granted to be held of the grantor himself, at least if the grant were made by the word "*dedi*," there, without any other warranty, the feoffor and his heirs were bound to warranty. This is enacted by the statute *de bigamis*, 4 Edw. I. cap. 6. 2 Inst. 274. and we have lord Coke's authority that this statute was only declaratory of the common law, in this respect. The reason for implying warranty, in this case, is by his lordship said to be, that, "where *dedi* is accompanied with a perdurable tenure of the feoffor and his heirs, there *dedi* importeth a perdurable warranty for the feoffor and his heirs to the feoffee and his heirs." 2 Inst. 275. The warranty in this instance was therefore a consequence of tenure, (Co. Litt. 101. b.) and so neces-

Operation of *grant* or *give*.

1st. In conveyances in fee simple.

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sary a consequence of it, that, where an express and qualified warranty was introduced, it did not restrain or circumscribe the *implied* [Watk. n. Gilb. Ten. 401.] warranty. Where lands were granted to be held of the chief lord of the fee, there the tenancy was of the chief lord, and no tenure subsisted between the grantor and the grantee. Warranty, therefore, being a consequence of tenure, did not hold in these cases between the grantor and grantee, as there was no tenure between them to raise it. Still, the grantor was supposed to be bound by his own gift. The word "give," therefore, imported, in this case, a warranty to him. But this was personal to the grantor; it did not apply to the heir, and it could not affect him without working that involuntary alienation, which, in a case of that nature, the jurisprudence of those times did not readily admit. The statute "*quia emptores terrarum*," 18 Edw. I. cap. 1. 2 Inst. 500. 66. put an end to the subinfeudation of fee simple estates, and of course put an end to the warranty we have been speaking of, as incidents to grants of lands in fee simple, to be held of the grantor and his heirs. The consequence was, that, after the statute *quia emptores terrarum*, there was no case, except that of homage auncestrel, in which warranty, unless it arose from the express contract of the parties, bound any person besides the donor, or bound him any longer than the term of his life. 2dly. *But with respect to estates tail and leases for life*, the judges took this important distinction, that, where a person seised in fee granted for life or in tail, reserving the reversion in himself, the grantees of the particular estates held of the reversioner, and he of the chief lord: where a person granted for life or in tail, with the remainder over in fee simple, both the tenants of the particular estates, and the remainder men, held of the chief lord. In the former case, therefore, the tenure between the donor and the donees still subsisting, the law remained as it did before the statute; that is, when those estates were created by the word "*dedi*," both the donor and his heirs, were, in consequence of the tenure, obliged to warranty. Thus it stood in respect of grants in fee simple, in tail, or for life; and in all these cases the warranty must be understood in its strict legal import, as implying an obligation in the lord to acquit his tenant against the superior lord, where there was a seignory paramount, and to give the tenant a recompence in case of eviction. 3dly. *But in leases for years*, (to which the subject now leads), the case is very different. A lease for years, (See Bacon's Abr. tit. *Leases and Terms for Years*), is a contract between the lessor and the lessee for the possession and profits of land on the one side, and a recompence by rent, or other consideration on the other. As the

2dly. In gifts in tail, and leases for life.

3dly. In leases for years.

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lessor contracts, that the lessee shall hold the land, he cannot claim it in opposition to his covenant. Thus he parts with the land during the term; but his supposed parting with the land, and the interest of the lessee in it, during the term, was rather a consequence of law accruing from the contract, than the contract for the enjoyment, a consequence of law, accruing from the parting with the land. The tenant, therefore, had only the perception of the profits, and was considered to hold the possession for the reversioner. The consequence was, that whoever recovered the freehold, reduced the term whether the recovery were true or feigned. As the possession was not considered to be in the lessee, there was originally no means by which he could recover it. His only remedy was in consequence of the contract, which constituted the lease. By virtue of that, the words "yielding "and paying," &c. were construed a covenant in favour of the lord, which enabled him to recover his rent by an action of covenant or an action of debt; and the words, "grant, demise, &c." were construed a covenant in favour of the tenant, which enabled him to recover damages as a recompence for the possession lost. In this sense they are said to imply a warranty. From the warranty of freehold estates it differs in its nature, as that arises from tenure, this from contract; and in its operation, as that, being a consequence of tenure, is not modelled by express warranties, this, arising from the contract of the parties, is considered to be modified and regulated by any express covenants inserted in the lease. See *Spencer's* case, 5 Rep. 17. *Brown* v. *Brown*, 1 Lev. 57. *Deering* v. *Farrington*, 1 Mod. 113. and *Clarke* v. *Sampson*, 1 Ves. sen. 101. Lord Coke, 101. b. 389. a. Co. Litt. expressly says, that, warranty cannot be annexed to chattels real or personal; for, says his lordship, if a man warrants them, the party shall have covenant or action upon the case.

Homage auncestral.

Thus, therefore, the law stands since the statute *quia emptores*. In all cases of homage auncestrel, if any such now exist, (which is at least doubtful), the doctrine of warranty remains as it did before the statute; that is, if the grant was made by the word "*dedi*," it imports a warranty. In other cases it may be expressed as the parties think proper: if it be not expressed, then, in conveyances in fee simple, it is not implied by the word "grant," or any other word, except the word "give;" and then it holds only during the life of the grantor: in gifts in tail, and in leases for life, by the word "give," where the reversion is left in the donor, the tenure between him and the donee or lessee still continues. Of that tenure it is a necessary consequence of law, and is not considered to be restrained by any

In conveyances in fee warranty implied by no other word but "give."

Gifts in tail and leases for life.

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express covenants. In leases for years, rendering rent, warranty, considering it to import a covenant for the quiet enjoyment of the term, is of the essence itself of the lease; but the lease being originally founded on contract, any of its terms may be varied by the parties themselves at their pleasure, and is, in fact, considered as varied *pro tanto* by the insertion of any express covenant. But the effect of an express covenant in restraining the effect of an implied general covenant, is not to be confounded with the effect of a particular covenant in restraining the effect of an express general covenant, as the latter is not restrained by a subsequent covenant, unless it can be considered as part of the general covenant. See *Nokes's* case, 4 Rep. 80. and 1 Saund. 60. It may happen, that, *a person having a term of years only, conveys the lands as an estate in fee simple* to another and his heirs, by the word "grant." But this cannot amount to a warranty of the lands, for the term. The operation of the word "grant" in implying a warranty in the creation or assignment of a term, arises from implication only, that is, from the law's presuming, by the party's using the word "grant," that he intended to warrant the lands as a term. But his expressly treating the land in the deed as a fee simple estate, and expressly conveying it as such, necessarily rebuts every implication of its being his intention or undertaking to convey it as a term of years. In what has been said above, the grantor is considered as the real owner of the land, receiving the purchase money, or other consideration for the estate or interest parted with. In this case, independently of all construction of particular words, there is great reason to consider him bound to warrant the property he parts with, as he receives the benefit of it. In the case of a trustee, this ground of raising or implying an obligation of warranty necessarily fails.

Conveyance of a fee by the word *grant*, by termor for years.

Upon the whole, to apply what has been said to the point mentioned at the beginning of the note, it appears clear, that whenever there is a deed, on the face of which the trustee is party, and conveys, merely as trustee, there is no substantial objection to his conveying by the word "grant." If the lands are freehold, it is clear that no warranty or covenant is imported by it; if it happens that they are held for a term of years only, all implication of an intention or undertaking to convey them for the term, is necessarily rebutted by their being treated in the deed, and conveyed by the party, as a fee simple estate; and if any such warranty or covenant would otherwise be implied, it would be restrained, by his covenant, that he himself has done no act to encumber, to a warranty or covenant against his own acts. To obviate, however, every doubt which may be entertained on

Conclusion, that there is no objection to a trustee conveying by the word *grant*.

this ground, when the word *grant* is used, it is usual to make the trustee convey "according to his estate, right, or interest, but not "further or otherwise," or to express that he grants, &c. "not as "warranting the title, but in order to pass or convey the lands." Whenever the former words are inserted, care should be taken to make them referrible to the trustee only, and not to the owner of the fee; who, in express contradiction from the guarded mode of conveyance applied to the trustee, should be made to "grant," &c. "fully "and absolutely." [See also 452, *post.*]

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It remains to enquire, what remedy a person purchasing under a defective title, has, exclusively of the purchaser's warranty or covenants, or where the title is subject to a defect, which the warranty or covenants do not reach. In every case where the seller conceals from the purchaser the instrument or the fact which occasions the defect, or conceals from him an incumbrance to which the estate is subject, it is a fraud, and the purchaser has the remedy of an action on the case, in the nature of an action of deceit. But a judgment obtained after the death of the seller, in an action of this nature, can only charge his property as a simple contract debt, and will not, therefore, except under very particular circumstances, charge his real assets. A bill in chancery, in most cases, will be found a better remedy. It will lead to a better discovery of the concealment, and the circumstances attending it, and may in some cases enable the court to create a trust in favour of the injured purchaser. In a late case, where the sellers knew of a defect in the title to a part of the estate, which was material to the enjoyment of the rest, and did not disclose the fact to the purchaser, and it could not be collected from the abstract, the purchaser, although he was not evicted, was relieved against the purchase in equity. The sellers were decreed to repay the purchase-money, with costs, and likewise all expenses which the purchaser had been put to relative to the sale, together with an allowance for any money he laid out in repairs during the time he was in possession. *Edwards* v. *M'Leay*, Coop. 308; affirmed by Lord Eldon on appeal, 11 July, 1818, [2 Swans. 287.] with a reservation of the question as to repairs. Sug. Vend. 416, 5th ed. [491. 7th ed.] But where the instrument or the fact, which occasions the defect of the title, or the instrument creating the incumbrance, is produced, the purchaser has fair notice given him of it, and if the covenants do not extend to it he appears to be without remedy, unless he can avail himself of the covenants of the earlier vendors, many of which are inherent to the lands, and to some of which, as the covenant for quiet enjoyment, there is no objection on account of their antiquity, where the breach is recent. It sometimes happens, that a purchaser

Remedy of a person purchasing under defective title.

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sold, assigned, transferred, and set over; *And* by these presents *doth* bargain, sell, assign, transfer, and set over, unto the said [*assignee of annuity*], his executors, administrators, and assigns, ALL THAT the said annuity or clear yearly sum of hundred and pounds,

Annuity.

which in and by the (*c*) (said recited) indenture was granted and secured by the said Sir [*grantor*], unto her the said [*grantee*], her executors, administrators, and assigns, for the said term of ninety-nine years, if the said Sir [*grantor*] should so long live, as therein is mentioned; *And* and all future payments thereof; *And also* the collateral bond of the said Sir [*grantor*], in the penal sum of thousand and pounds, bearing even date with the (*c*) (said recited) indenture, and conditioned for the due payment of the said annuity; *Together* with the penalty of the same bond; *And also* the [warrant of attorney (*d*) mentioned in the (*c*) (said recited indenture), and the] judgment which hath been entered up [in pursuance thereof] in his majesty's court of king's bench, at Westminster, in or as of term one thousand eight hundred and , in an action of debt against the said Sir [*grantor*], at the suit of the said [*grantee*], for the sum of thousand and pounds, and eighty shillings costs; *Together* with all and every sums and sum of money to become due or payable thereupon; *And* all benefit and advantage to be had or derived therefrom: AND ALSO all the right, title, interest, trust, property, benefit, claim,

Future payments.

Collateral bond.

Warrant of attorney and judgment.

All sums, &c.

All benefit, &c.

And all the right, &c.

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consents to take a defective title, relying for his security on the vendor's covenants. Where this is the case, this should be particularly mentioned to be the agreement of the parties; as it has been argued, that, as the defect in question was known, it must be understood to have been the agreement of the purchaser to take the title, subject to it, and that the covenants for the title should not extend to warrant it against this particular defect.—On the general doctrine respecting the usual covenants for title, see Mr. Sugden's Law of Vendors, ch. 13. Butl. n. Co. Litt. 384. a. (1); and as to the general operation of the word "grant," *vide post*, 452.

(*c*) If by indorsement, say,

BY INDORSEMENT.

"within written"

(*d*) The warrant of attorney is always filed on entering up the judgment.

and demand whatsoever, both at law and in equity, of her the said [*grantee*], of, in, to, or out of the said annuity, judgment, monies, and premises intended to be hereby assigned, and every or any part or parcel thereof: *Together* with full power and authority for the said [*assignee of annuity*], his executors, administrators, or assigns, from time to time to recover, receive, get in, and discharge the said annuity, monies, and premises, or any of them, or any part thereof, for or in the name or names, and as the attorney or attornies, of the said [*grantee*], her executors, administrators, or assigns, or any of them, either by action, suit, entry, distress, or otherwise: To HAVE, hold, receive, perceive, take, and enjoy the said annuity or yearly sum of hundred and pounds, and all future payments thereof, and the said bond [warrant of attorney] and judgment, and all sum and sums of money to become due and payable, or recoverable thereupon respectively, and all benefit and advantage thereof, together with all such powers, authorities, and remedies as aforesaid, and all and singular other the premises hereby assigned, or mentioned and intended so to be, unto and by the said [*assignee of annuity*], his executors, administrators, and assigns, as and for his and their own proper monies and effects; *But* UPON TRUST, *nevertheless*, for the said Sir [*grantor*], and to be paid, applied, held, assigned, or otherwise disposed of, upon such trusts, and to and for such ends, intents, and purposes, as he the said Sir [*grantor*] shall direct or appoint. AND THE SAID [*grantee*], for herself, her heirs, executors, and administrators, doth hereby covenant, promise, declare, and agree with and to the said [*assignee of annuity*], his executors, administrators, and assigns, That she the said [*grantee*] hath not at any time heretofore made, done, executed, or committed, or knowingly permitted or suffered to be made or done, any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, the said annuity, bond, judgment, monies, and premises hereby assigned, or mentioned and intended so to be, or any of them, or any part or parcel thereof, is, are, can, shall, or may be impeached, assigned, released, discharged, delayed in payment, or otherwise prejudicially affected, or incumbered

ASSIGNMENT OF ANNUITY AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

Power of attorney to receive and recover annuity and monies.

Habendum of annuity, securities, monies, &c.

To assignee,

Upon trust for grantor.

Covenant by grantee against incumbrances.

ASSIGNMENT OF ANNUITY AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

in anywise howsoever. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance and performance of the said agreement, and for the several considerations and purposes hereinbefore expressed; *And also* in consideration of the sum of ten shillings of like lawful money, to the said [*trustee*] in hand at or before the sealing and delivery of these presents, well and truly paid by the said [*assignee of term*], the receipt whereof is hereby acknowledged, *He* the said [*trustee*], at the request and by the direction, as well of the said [*grantee*] as also of the said Sir [*grantor*], testified by their being made parties to and severally executing these presents, *hath* bargained, sold, assigned, transferred, and set over; AND by these presents *doth* bargain, sell, assign, transfer, and set over, unto the said [*assignee of term*], his executors, administrators, and assigns, ALL and singular the several manors, messuages, lands, tenements, hereditaments, and premises, which in and by the (*e*) (said recited) indenture were granted, bargained, sold, and demised by the said Sir [*grantor*] unto him the said [*trustee*], for the (*f*) (said) term of (one hundred and fifty) years, or were intended so to be, with their and every of their rights, members, and appurtenances: AND ALSO all the estate, right, title, interest, term and terms of years yet to come and unexpired, trust, property, possession, claim, and demand whatsoever, both at law and in equity, of him the said [*trustee*], of, in, to, or out of the same several manors, messuages, lands, tenements, hereditaments, and premises, and every of them, and every part and parcel thereof. TO HAVE AND TO HOLD the said several manors, messuages, lands, tenements, hereditaments, and all and singular other the premises hereby lastly mentioned to be hereby assigned, or intended so to be, with their and every of their rights, members, and appurtenances, unto the said [*assignee of term*], his executors, administrators, and assigns, henceforth for and during all the residue and remainder of the (*f*) (said)

Further testatum.

Nominal consideration.

Assignment by trustee by direction of grantee and grantor to assignee.

Parcels.

All the estate.

Habendum.

BY INDORSEMENT. (*e*) If by indorsement, say, "within written"

BY INDORSEMENT. (*f*) If by indorsement, say, "within mentioned"

ASSIGNMENT OF ANNUITY AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

term of (one hundred and fifty) years granted and created in and by the (*g*) (said recited) indenture, and which is now to come and unexpired therein: *But* UPON SUCH TRUSTS *nevertheless*, and to and for such ends, intents, and purposes, and particularly for the raising and paying unto the said [*assignee of annuity*], his executors, administrators, or assigns, upon trust as aforesaid, the said annuity or yearly sum of hundred and pounds, when in arrear, as in and by the said recited indenture are mentioned, expressed, and declared of and concerning the same. AND THE SAID [*trustee*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, declare, and agree with and to the said [*assignee of term*], his executors, administrators, and assigns, That he the said [*trustee*] hath not at any time heretofore made, done, executed, or committed, or knowingly permitted or suffered to be made or done, any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said manors, messuages, lands, tenements, hereditaments, and premises hereby assigned, or intended so to be, or any of them, or any part thereof, or the said term of (one hundred and fifty) years therein, are, is, can, shall, or may be impeached, charged, assigned, surrendered, or otherwise incumbered in any wise howsoever. IN WITNESS, &c.

Upon trusts for securing annuity.

Covenant by trustee against incumbrances.

(*g*) If by indorsement, say, "within written"

BY INDORSEMENT.

ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

ASSIGNMENT *of a* TERM *to* MERGE *as to Part of the Lands demised to secure an Annuity; and* ASSIGNMENT *of a* JUDGMENT *by the Annuitant to a Trustee, to enable the Grantor to sell the whole of his Lands not remaining subject to the Annuity.*

THIS INDENTURE, made the day of , in the year, &c. George the Fourth, &c. and in the year of our Lord 18 ; BETWEEN [*grantee*] of, &c. of the first part, [*trustee of judgment*] of, &c. of the second part, [*two trustees for sale*] of, &c. of the third part, and [*grantor*] of, &c. of the fourth part. WHEREAS, by a bond or obligation in writing, bearing date the day of 17 , the said [*grantor*] became bound to the said [*grantee*], in the penal sum of thousand hundred pounds; *With a condition* thereunder written for making void the same on payment by the said [*grantor*], his heirs, executors, or administrators, to the said [*grantee*] and his assigns, during his life, of *One* annuity or yearly sum of hundred pounds, free from all deductions, at the times and in manner therein mentioned: *And* at the foot of which said bond it was stated, that the said [*grantee*] had contracted and agreed with the said [*grantor*], for the purchase of the said annuity of hundred pounds for the sum of thousand hundred and pounds shillings and pence; the receipt and payment of which sum the said [*grantor*] did thereby acknowledge. AND WHEREAS, by indenture also bearing date the said day of , 17 , and made or expressed to be made between the said [*grantor*] of the one part, and the said [*grantee*] of the other part, *In consideration* of the said sum of thousand hundred and pounds shillings and

Parties.

Recital of bond for payment of annuity.

Recital of demise for better securing annuity.

pence, so paid by the said [*grantee*], for the purchase of the said annuity of hundred pounds, and for better securing the due payment of the same annuity, the said [*grantor*] *did* grant, demise, set, and to farm let unto the said [*grantee*], *The* capital messuage, dwelling-house, cots, lands, farms, mill, toll-tin, and farm-tin, thereinafter particularly mentioned and described, and which had been usually granted, leased, or demised by deed or deeds for lives or for years, determinable upon deaths, at the several ancient and accustomed yearly rents, heriots, and services thereinafter reserved, that is to say; *All that*, &c. (*Except*, &c.) *To hold* the same with the appurtenances, (*except* as therein and hereinbefore is mentioned to be excepted, and except the said tenement, lands, and hereditaments, called [H], then in the tenure and occupation of the said [*tenant*],) unto the said [*grantee*] and his assigns, from the day of the date thereof, for the term of (ninety-nine) years, if the said [*grantee*] thould so long live; *And to hold* the same premises called [H] aforesaid, with the appurtenances (*except* as in the indenture now in recital and hereinbefore is mentioned to be excepted), unto the said [*grantee*] and his assigns, from and after the death of the said [*tenant*], for the term of (ninety-nine) years, If the said [*grantee*] should so long live: *Rendering* to the said [*grantor*], his heirs and assigns, the several and respective rents; *And subject* to the several and respective heriots by the indenture now in recital particularly made payable and reserved. AND WHEREAS the said [*grantor*] did in term, in the year of the reign of his present Majesty, (*or* his late Majesty King George the Third) suffer a judgment by confession in an action of debt on bond, to be signed and entered up against him in the Court of Common Bench at Westminster, at the suit of the said [*grantee*], as by the record of the said judgment in the said court will more fully appear. AND WHEREAS, by divers conveyances and assurances in the law, *All*, or the greater part of the manors, messuages, farms, &c. of the said [*grantor*], situate in the said counties of and , including the immediate reversion expectant on the determination of the said term of (ninety-nine) years, of and in the hereditaments and premises hereinafter assigned, or in-

ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

Parcels.

Habendum, with exception.

Habendum of part excepted, in reversion after decease of tenant for life.

Reddendum.

Recital of confession of judgment.

Recital, that by divers conveyances, greater part of grantor's estates were conveyed to trustees, In trust by sale to liquidate debts and repurchase annuities.

ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

tended so to be, have been conveyed or otherwise assured by the said [*grantor*], *Unto* and to the use of the said [*trustees for sale*], their heirs and assigns, *Upon trust* for sale and other trusts, for the payment and liquidation of the debts of the said [*grantor*], and the redemption or repurchase of divers of the annuities granted by him. AND WHEREAS, the said judgment obtained by the said [*grantee*], as hereinbefore is mentioned, is an impediment to the completion of the sales of divers of the trust estates which have been sold, and of other estates intended to be offered, for sale: AND the estates hereinafter mentioned, being part of the estates comprized in the said indenture of demise hereinbefore recited, have also been sold, or are intended to be offered for sale, and have as to part of them been already contracted to be sold to divers purchasers, but by reason of the said indenture and demise thereof to the said [*grantee*], the sales thereof cannot be carried into effect. AND WHEREAS, at the instance of the said [*grantor* and *trustees for sale*], the said [*grantee*] hath agreed to assign the said judgment, and the benefit thereof, (except as hereinafter is mentioned,) to the said [*trustee of judgment*], his executors, administrators, and assigns, Upon the trusts hereinafter declared of the same judgment; AND hath also agreed to assign the said capital messuage, &c. and several lands, &c. hereinafter mentioned, unto the said [*trustees for sale*], To the intent that the same may be merged in the freehold and inheritance of the same premises. NOW THIS INDENTURE WITNESSETH, that in consideration of ten shillings of lawful money of Great Britain [and Ireland], by each of them the said [*trustees for sale*] in hand well and truly paid unto the said [*grantee*], at or before the sealing and delivery of these presents; The receipt whereof is hereby acknowledged, *He* the said *grantee*], at the request and by the direction and appointment of the said [*grantor*], testified by his executing these presents, *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents doth bargain, sell, assign, transfer, and set over, unto the said [*trustees for sale*], their executors, administrators, and assigns, ALL THAT, &c. AND all the estate, right, title, interest, term and terms for years, property, claim, and demand whatsoever, of him the said

Recital that judgment is an impediment to sales;

And that part of lands demised to grantee are intended to be sold.

Recital of grantee's agreement to assign judgment as aftermentioned.

And to assign part of the lands demised to merge.

Testatum.

Assignment of part of lands demised, to merge in the inheritance.

All the estate.

[*grantee*], of, in, to, or out of the hereditaments and premises hereby assigned, or intended so to be, and every part and parcel thereof, with their and every of their appurtenances. [To (*a*) HAVE AND TO HOLD the said hereditaments and premises, hereby assigned or intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said [*trustees for sale*], their executors, administrators, and assigns, henceforth for and during all the residue and remainder now to come and unexpired of the said term of (ninety-nine) years, determinable as aforesaid;] To *the end and intent,* that the said term of (ninety-nine) years of and in the said messuage, &c. hereby assigned, or intended so to be, may be merged and extinguished in the freehold and inheritance of the same premises; FREED and absolutely discharged of and from the trusts and purposes declared thereof, in and by the said hereinbefore recited indenture of the day of 18 ; and from all claims and demands in respect thereof. AND THE SAID [*grantee*], for himself, his heirs, executors, and administrators, doth covenant and declare to and with the said [*trustees for sale*], their executors, administrators, and assigns, by these presents, that he the said [*grantee*] hath not at any time heretofore made, done, executed, committed, or knowingly or willingly suffered any act, deed, matter, or thing whatsoever, whereby, or wherewith, or by reason or means whereof, the hereditaments and premises hereby assigned or intended so to be, or the said term of (ninety-nine) years, determinable as aforesaid, therein, or any part thereof respectively, are, is, can, shall, or may be impeached, charged, incumbered, or in any way affected. AND THIS INDENTURE ALSO WITNESSETH, that in consideration of ten shillings of like lawful money to the said

ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

[Habendum.]

Covenant by annuitant against incumbrances.

Further testatum.

(*a*) An *habendum,* though a formal part of a conveyance, is rather an *informal,* than a formal part of a surrender, or of a release of right; so in the above case, though the word *surrender* is not used, yet as the trustees have the immediate reversion, expectant on the determination of the estate for years, that estate merges in the reversion, and the habendum is therefore useless; for, as there is no continuing estate, there is *not any estate to be held.* 3 Pres. Abs. 39.

Habendum informal in surrender, release of right, &c.

ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

[*grantee*] in hand paid by the said [*trustee of judgment*], at or immediately before the sealing and delivery of these presents; The receipt whereof is hereby acknowledged; *He* the said [*grantee*], at the like request, direction, and appointment, and testified as aforesaid, *Hath* bargained, sold, assigned, transferred, and set over; AND by these presents doth bargain, sell, assign, transfer, and set over unto the said [*trustee of judgment*], his executors, administrators, and assigns, ALL THAT the said judgment obtained by the said [*grantee*], or suffered by the said [*grantor*]; *And* the full benefit thereof; *and* of all liens created by the same judgment: AND all the right, title, and interest, claim and demand whatsoever, of him the said [*grantee*], of, in, to, out of, and upon the same judgment, or by reason or in respect thereof (*Except* as hereinafter is excepted). TO HAVE, hold, receive, and take the said judgment, and the full benefit thereof, unto the said [*trustee of judgment*], his executors, administrators, and assigns, henceforth, as his and their own judgment, property, and effects; *With* full power and authority to and for the said [*trustee of judgment*], his executors, administrators, or assigns, to use the name or names, and act as the attorney or attornies of the said [*grantee*], his executors or administrators, in enforcing and deriving the benefit of the same judgment, and of all executions which shall be sued thereupon, and of all estates which shall be created by such executions, and the writ of liberate (*b*) thereupon; *Nevertheless* UPON THE TRUSTS, and to and for the intents and purposes hereinafter expressed and declared of and concerning the same judgment. AND *it is hereby directed, declared, and agreed,* by and between all the parties to these presents, as far as they are respectively interested, that the assignment of the said judgment and premises hereby made to the said [*trustee of judgment*], his executors, administrators, and assigns, is so made to him and them UPON TRUST that he or they do and shall stand and be possessed of and interested in and entitled to the said judgment, and the benefit thereof; *Upon trust,* that he or

Assignment of judgment.

And all the right, &c.

Habendum of judgment.

With power to sue in grantee's name.

Declaration of trust of judgment;

Liberate.

(*b*) As to the writ of *liberate,* see 2 Tidd's Practice, 1116, 7th ed. Wms. n. 2 Saund. 70, c. 4th ed.

ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

to protect all grantor's lands (except premises not assigned by grantee), and the purchasers thereof.

they do and shall, as far as may be, and circumstances will permit, protect of and from the said judgment, and the lien thereof, and executions thereupon, *All* the manors, messuages, &c. now or late of the said [*grantor*], which are subject to the lien of the said judgment respectively; (*Other than and except* such of the said messuages, &c. hereinbefore mentioned, as were demised to the said [*grantee*] as aforesaid, and are not hereby assigned and merged, or intended so to be;) *And also* the purchasers and other owners for the time being of the same manors, &c. (except as aforesaid): AND for that purpose do and shall stand and be possessed of the same judgment, and the benefit thereof, as far as the same relates to or concerns the same manors, &c. respectively (except as aforesaid), IN TRUST for the purchaser or purchasers, and other owner or owners for the time being of the same manors, &c. respectively (except as aforesaid); *And subject thereto*, do and shall stand and be possessed of the said judgment and the benefit thereof; IN TRUST for the said [*grantee*], his executors, administrators, and assigns. PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties hereto, that nothing herein contained shall prevent or be construed to prevent, the said [*grantee*], his executors, administrators, or assigns, from enforcing the lien of the said judgment, or issuing an execution or executions thereon, against the lands, tenements, goods, and chattels of the said [*grantor*], *Save and except* his said lands and tenements in the said counties of and , which are not included in and demised by the said indenture of the day of , 17 ; *And also save and except* so much and such part of the said lands, tenements, and hereditaments, included and comprized in the said lastly mentioned indenture, as is hereby assigned and merged, and intended so to be, with the appurtenances. AND THE SAID [*grantee*], doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustee of judgment*], his executors, administrators, and assigns, that he the said [*grantee*], his executors and administrators, upon the request of the said [*trustee of judgment*], [*grantor*], [*trustees for sale*], or either of them, their, any, or either of their

Subject thereto.

In trust for grantee.

Proviso that assignment is not to prevent annuitant from suing execution against residue of lands.

Covenants by grantee for further assurance.

ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

heirs, executors, administrators, or assigns, shall and will, at the costs and charges of the person or persons requiring the same, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, assignments, powers, authorities, and other assurances whatsoever, for the further, better, more perfectly, lawfully, and absolutely or satisfactorily assigning or assuring unto or vesting in the said [*trustee of judgment*], his executors, administrators, or assigns, and empowering him or them to receive and obtain the said judgment hereby assigned, or intended so to be, and the full benefit thereof, (except as aforesaid) Upon the trusts, and for the ends, intents, and purposes, and under and subject to the declarations and agreements hereinbefore expressed and contained of and concerning the same; *As* by the said [*trustee of judgment*], his executors, administrators, or assigns, or the said [*grantor* and *trustees for sale*], or any or either of them, their, any, or either of their heirs or assigns, shall be reasonably devised or advised, and required, and tendered to be made, done, and executed. PROVIDED ALWAYS, that nothing in these presents contained shall be considered or taken to release, exonerate, or discharge the said hereditaments and premises comprized in and demised by the said indenture of the day of , 17 , (*except* such of the said hereditaments as are hereinbefore assigned or merged) of and from the said annuity or yearly sum of hundred pounds, secured to the said [*grantee*] as aforesaid, nor to prejudice or affect any security which he now holds for the said annuity or yearly sum, besides the said judgment expressed to be hereby assigned, so far as such security affects or concerns the same hereditaments and premises (except as aforesaid) or any of them. IN WITNESS, &c. (*a*)

Proviso that assignment is not to release residue of lands from annuity, or to prejudice any other security.

(*a*) [As to the usual modes of exonerating part of lands from a rent charge, 3 Cru. Dig. 345, 3d ed. but it seems, on consideration, that they cannot be much depended upon. *Ed.*]

ASSIGNMENT OF ANNUITY, BY SURVIVING GRANTEE, FREED FROM REPURCHASE BY GRANTOR.

ASSIGNMENT *of an* ANNUITY *granted, subject to Repurchase, and a* BOND *and* TERM *of Years for securing the same, from a* SURVIVING JOINT GRANTEE, *and the Trustee of the Term, to a Purchaser and his Trustee;* FREED FROM *the Power to* REPURCHASE *by the Grantor, in Consideration of a further Sum: with special* RECITALS *as to Benefit of* SURVIVORSHIP *between the Grantees.*

THIS INDENTURE, made the day of , in the year of our Lord 18 ; BETWEEN [*surviving grantee*] of, &c. of the first part, [*grantor*] of, &c. of the second part, [*purchaser*] of, &c. of the third part, [*old trustee of term*] of, &c. of the fourth part, and [*new trustee of term*] of, &c. of the fifth part. WHEREAS by indenture of bearing date the day of , in the year 17 , and made or expressed to be made between the said [*grantor*] of the first part, the said [*grantee*], and [*deceased grantee*], since deceased, of the second part, and the said [*old trustee*] of the third part, *It is witnessed,* that in consideration of the sum of pounds to the said [*grantor*] paid by the said [*grantees*], in equal proportions, being the same sum as was mentioned in the condition of the bond hereinafter mentioned, he the said [*grantor*] did give, grant, and confirm unto the said [*grantees*], their executors, administrators, and assigns, for and during the natural life of him the said [*grantor*], *One* annuity, clear yearly rent-charge, or sum of pounds, to be issuing and payable, had, received, and taken by them the said [*grantees*], their executors, administra-

Parties.

Recital of grant of annuity to two as joint tenants,

charged on leasehold premises.

ASSIGNMENT OF ANNUITY, BY SURVIVING GRANTEE, FREED FROM REPURCHASE BY GRANTOR.

tors, and assigns, out of *All those*, &c. *To hold* the same annuity, yearly rent-charge, or annual sum, unto the said [*grantees*], their executors, administrators, and assigns, for and during the natural life of him the said [*grantor*], payable half yearly, at or on the days and times, and in manner therein mentioned; *Together* with a proportionable part of such annuity, or yearly rent-charge, for the time which should elapse between the last of the said days of payment, next preceding the decease of the said [*grantor*], and the time of such his decease: *With* the usual powers of distress and entry, and perception of the rents and profits for recovering and securing the same annuity as therein mentioned: *And* in which said indenture now in recital is contained a covenant for procuring the renewal of the lease of the premises charged with the annuity, and which are held by lease granted by the Bishop of (London) for a term of (seven) years, subject to renewal; *and* that the lease when renewed should be chargeable with the annuity: AND *it is by the now reciting indenture, further witnessed,* that for the considerations aforesaid, and for the better securing the payment of the said annuity, yearly rent-charge, or sum of pounds, and also in consideration of ten shillings to the said [*grantor*], paid by the said [*old trustee*], he the said [*grantor*], *did*, at the nomination and by the direction and appointment of the said [*grantees*], testified as therein mentioned, grant, bargain, sell, and demise unto the said [*old trustee*], his executors, administrators, and assigns, *All those*, &c. *To hold* the same unto the said [*old trustee*], his executors, administrators, and assigns, from the day next before the day of the date of the now reciting indenture, for and during the term of (ninety-nine) years thence next ensuing, if he the said [*grantor*] should so long live; *Upon certain trusts* therein mentioned, for better securing the payment of the said annuity, yearly rent charge, or sum of pounds, and the fines, fees, and expenses, which should from time to time be paid by the said [*grantees*], their executors, administrators, or assigns, for the renewal of the lease of the premises thereby demised, in the event of the said [*grantor*] refusing or neglecting to procure the same: AND *in and by the said reciting indenture it was provided, declared, and agreed,*

Habendum for grantor's life.

Powers of distress and entry.

Covenant for renewal of lease.

Demise to trustee.

Parcels.

Habendum.

Upon trust to secure annuity, and fines, &c. for renewing lease.

Power to repurchase.

that in case the said [*grantor*] should at any time after the expiration of twelve months from the day of the date thereof, be minded or desirous to redeem or repurchase the said annuity, yearly rent charge, or sum of pounds, it should be lawful for him the said [*grantor*], so to do, upon payment by him, to the said [*grantees*], their executors, administrators, and assigns, of the sum of [*original purchase money, and half a year's annuity*] pounds, and of all sum and sums of money which should be due, for or on account of the said annuity, yearly rent-charge, or sum of pounds, and the arrears thereof, and of all costs, charges, and expenses, which the said [*grantees*], their executors, administrators, or assigns, should have paid, or been put unto touching or concerning the same, or the non-payment thereof; *And* from and immediately after such payment being made to the said [*grantees*], their executors, administrators, or assigns, of the said sum of pounds, and the arrears of the said annuity, yearly rent charge, or sum of pounds, and all such costs, charges, and expenses as aforesaid, but not otherwise, the said annuity, yearly rent charge, or sum of pounds, should cease, determine, and be void and at an end (*a*). AND WHEREAS

ASSIGNMENT OF ANNUITY, BY SURVIVING GRANTEE, FREED FROM REPURCHASE BY GRANTOR.

Recital that one grantee was dead, whereby annuity survived to other.

(*a*) If it were the case, say,

"AND *in and by the said reciting indenture, it was provided, declared, and agreed*, that in case either of them the said [*grantees*], should depart this life during the continuance of the said annuity, yearly rent charge, or sum of pounds, Then the same annuity, and the proportional part thereof, and the money to be paid for the repurchase thereof, (or so much thereof as should remain unpurchased) as aforesaid, should belong to and be the sole property of the survivor of them the said [*grantees*], his executors, administrators, and assigns."

Recital of declaration of benefit of survivorship.

Or if it were the case, say,

"AND *in and by the said reciting indenture, it was provided, declared, and agreed*, that the said annuity, yearly rent-charge, or sum of pounds, and the proportional part thereof, and the money to be paid for the repurchase of the same annuity, (or so much thereof as

Recital of declaration to rebut benefit of survivorship.

ASSIGNMENT OF ANNUITY, BY SURVIVING GRANTEE, FREED FROM REPURCHASE BY GRANTOR.

the said [*deceased grantee*], having lately departed this life, the said annuity, yearly rent charge, or sum of

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should remain unpurchased) as aforesaid, should, *As* to one equal half part thereof, belong to and be the sole property of the said [*grantee*], his executors, administrators, and assigns; *And* as to the other equal half part thereof, should belong to and be the sole property of the said [*deceased grantee*], his executors, administrators, and assigns; *And* that no benefit of survivorship should be had or taken by either of them the said [*grantees*], or by either of their executors, administrators, or assigns, in respect of the said annuity, and proportional part and money to be paid for the repurchase of the same."

In the last mentioned case, the executors, &c. of the deceased grantee, will be necessary parties to an assignment of the annuity. *Vide ante*, 370. 373.

Right of survivorship on a joint purchase.

Where two or more *purchase* lands, and advance the money in equal proportions, and take a conveyance to them and their heirs, it is a joint-tenancy, that is, a purchase by them jointly of the chance of survivorship, which may happen to the one of them as well as to the other; but where the proportions of the money are not equal, and this appears in the deed itself, it makes them in the nature of partners; and however the legal estate may survive, yet the survivor shall be considered in equity, but as a trustee for the others, in proportion to the sums advanced by each of them. *Lake* v. *Gibson*, 1 Eq. Ca. Abr. 291. pl. 3. *Jefferies* v. *Small*, 1 Vern. 217. *Lake* v. *Craddock*, 3 P. Wms. 158. Noy's Maxims, 78 (*c*), 9th ed. So, if two persons advance a sum of money, either in equal or unequal proportions, by way of mortgage, and take the mortgage to them jointly, and one of them dies; when the principal or interest is paid, the survivor is not, in equity, entitled to the whole, but the representative of him who is dead, is entitled to his proportion. *Petty* v. *Styward*, 1 Ch. Rep. 58. 3 Atk. 734. 2 Ves. sen. 259. 5 Bac. Abr. 39. 46. 20 Vin. Abr. 147. (A), pl. 2. The consequence of which principle is, that in the absence of an express declaration in the mortgage deed, that the receipt of the survivor shall be a sufficient discharge, the executors or administrators of a deceased joint mortgagee should, on assigning the mortgage, be parties, to direct the surviving mortgagee to convey; because the survivor is, in equity, a trustee for the representatives of the deceased mortgagee. 2 Pow. Mortg. 700, 4th ed.

No survivorship on a mortgage.

Therefore executor of deceased mortgagee should join in assignment of mortgage.

Survivorship as to annuities.

There has not been any determination on this point as to the pur-

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pounds, is become legally and absolutely vested in the said [*surviving grantee*], by survivorship. And whereas the said annuity, yearly rent charge, or sum of pounds, and all arrears thereof, up to the day of , last past, have been satisfied and paid, as the said [*grantee*] doth hereby admit and acknowledge. And whereas the said [*grantee*] hath, on the application of the said [*purchaser*], agreed, in consideration of the sum of pounds, to be by him paid to the said [*grantee*], to assign and transfer the said annuity, or yearly rent charge, or sum of pounds, and the securities for the same, unto the said [*purchaser*], his executors, administrators, and assigns. And whereas the said [*grantor*], at the instance and request, and for the satisfaction of the said [*purchaser*], hath covenanted and agreed to ratify and confirm the assignment to be made to him by the said [*grantee*], of the said annuity, yearly rent charge, or sum of pounds, freed and discharged of and from the power or proviso for redemption or repurchase thereof, in the said recited indenture contained, in consideration of the sum of pounds. Now this indenture witnesseth, that in pursuance and part performance of the said agreements, and in consideration of the sum of pounds of lawful money of Great Britain [and Ireland], to the said [*grantee*] in hand well and truly paid by the said [*purchaser*], at or before the sealing and delivery of these presents; *And* in consideration of the sum of pounds of like money to the said [*grantor*] in like manner paid by the said [*purchaser*], the receipt of which said several sums of pounds and pounds respectively, making together the sum of pounds, the

That all arrears have been paid to a certain day.

That surviving grantee had agreed to assign.

And that grantor had agreed to ratify assignment, and free annuity from power to repurchase.

Assignment by grantee confirmed by grantor, of

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chase of annuities; and therefore, it is only on the general principle of *purchases*, that it can be applicable to them. However, as the inequality of the proportions of the sum advanced by each of the grantees, may be consistent with their presumed agreement for the benefit of survivorship, in consequence of the relative value of their lives; and as, on the other hand, the right of survivorship on an equal payment may, by their presumed agreement, be negatived in consequence of the relative value of their lives; on every joint-purchase, the intention of the parties on this point should be expressly declared, in order to avoid any question.

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said [*grantee*] and [*grantor*] do hereby respectively acknowledge, and of and from the same and every part thereof respectively do hereby respectively acquit, release, and discharge the said [*purchaser*], his executors, administrators, and assigns, by these presents; he the said [*grantee*] *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *doth* bargain, sell, assign, transfer, and set over; *And* the said [*grantor*], *hath* granted, ratified, and confirmed; *And* by these presents *doth* grant, (*b*), ratify, and confirm unto the said [*purchaser*],

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Memorial.

(*b*) If a similar grant to the above be not within the 53 Geo. III. cap. 141. sec. X. *ante*, 355, a memorial of this assignment should be enrolled, because the annuity being thereby freed from the power of repurchase, it operates as a new *grant* from the grantor. Withy. 453.

Before judgment be entered on warrant of attorney for securing annuity, granted before 17 Geo. 3. c. 26. a memorial must be enrolled of the securities.

By sec. II. of the late annuity act, 17 Geo. III. c. 26. which took effect by relation, on the 31st day of October, 1776, it was enacted, "that before any judgment shall be entered of record upon any warrant of attorney, for recovering or securing the payment of any annuity or rent charge, that hath already been *granted* for one or more life or lives, or for any term of years or greater estate, determinable upon one or more life or lives, and before any execution shall be sued out, or action brought on any such judgment already entered, on any deed, bond, instrument, or other assurance, already executed for the purposes aforesaid, a like memorial of the deed, bond, instrument, or other assurance, shall be inrolled in the High Court of Chancery; and in case the party shall neglect to inrol the same, any such judgment, execution, or proceeding in the action respectively, shall be null and void."

Which must state any assignment previously made.

Upon this clause it was decided in the Common Pleas, in *Grant* v. *Foley*, Trin. 23 Geo. III. MSS. Hunt, 38. 2d ed. that a memorial of a bond for securing an annuity, entered into before the passing of the act, was not sufficient, because it did not mention a warrant of attorney for confessing judgment, given at the same time, and also an assignment of the annuity which existed at the time of the enrollment of the bond; because, as Lord Loughborough said, the statute requires, that whenever any step is to be taken respecting an annuity *granted before the act passed*, an enrollment must be made, like to the memorial, which must be made on making a new grant, that is, the state of the parties as they are at the time of the enrollment. Perhaps it may be doubted whether the latter part of his lordship's opinion, is author-

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ized by the act of parliament. But it is admitted by the judgmen that if the assignment had been made subsequently to the due enrollment of the original securities, a memorial of the assignment would have been unnecessary.

When it was stated, *ante*, 342, that a memorial of an assignment of an annuity, need not be enrolled, it was thought unnecessary to mention, that a different opinion to a certain extent had been expressed; but upon consideration it seems proper to state what has been said on the subject: Mr. Hunt, in his collection of cases, &c. on the annuity act, says, "every deed of assignment of *any part* of an annuity already granted and enrolled, must be registered according to the requisites prescribed by this act, each assignment being in that respect considered as a fresh grant. *Duke of Bolton* v. *Williams*, 2 Ves. jun. 138. 4 Bro. Ch. Ca. 297. S. C." Hunt on Annuities, 36, 2d ed. So in a note to 2 Hen. Blacks. 307, it is stated, "but if it had been assigned in *parts*, to different persons, *it seems necessary*, from the case of the *Duke of Bolton* v. *Williams*, 4 Brown's Chan. Cas. 297, that each assignment should be registered." So also Mr. Blayney, in his treatise on annuities, page 44, says, "an assignment of *part* of an annuity must be memorialized, *Duke of Bolton* v. *Williams*, 4 Bro. Ch. Ca. 297; 2 Ves. jun. 138. S. C.; in order that it may appear by the register, who has the present subsisting right; such assignment being considered of the nature of a *fresh grant*; but an assignment of the *whole* property needs not, the protection intended to be afforded by the statute, being sufficiently complied with by the enrollment of the original securities. *Dixon* v. *Birch*, 2 H. Blacks. 307."

A memorial of an assignment of an annuity, granted since 17 Geo. 3. c. 26, need not be enrolled.

Some persons have thought an assignment of part of an annuity ought to be enrolled;

Supposing a memorial of an assignment of *part* of an annuity to be necessary on the above principles, (but neither of the cases *cited* in the least degree authorises any such conclusion,) the same reasoning would equally apply to an assignment of the *whole* annuity: on the contrary, the cases which have decided it to be unnecessary, to enrol a memorial of an assignment of the *whole* annuity, equally apply to an assignment of *part*.

but there is no authority for that opinion.

The question in the case of the *Duke of Bolton* v. *Williams*, was as to this point, simply, whether a *grant* of an annuity made after the passing of the annuity act, to be paid out of an annuity of a larger amount, payable to the grantor under a deed of trust or voluntary settlement, made eleven years before the annuity act passed, and within the eighth section of that act, *ante*, 357, required enrollment? The counsel for the grantee having observed, "it is doubtful, whether the assignment of an annuity requires any memorial; though the Court of Common Pleas did in a late case seem to think an assignment within

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the statute; Lord Loughborough observed; "It is very material for you to contend, if you can, that an assignment of an annuity is not to be registered. Is it not a deed, whereby an annuity is *granted* for one or more lives?" His lordship clearly referred to the words of *grant*, used in the assignment, as stated, 4 Bro. C. C. 309. 2 Ves. jun. 152; the question of an *assignment* or transfer either of an annuity, or a *part* of an annuity, not being before the court. The case above referred to by the counsel, was *Grant* v. *Foley*, *ante*, 447.

However, the Court of King's Bench, in *Bromley* v. *Greathead*, Hil. 34 Geo. 3. MSS. Hunt, 45. intimated a very clear opinion, that there was no necessity for an assignee of an annuity, which was properly enrolled when it was first granted, to enrol a memorial of the assignment before he proceeds against the grantor; and Lord Kenyon, chief justice, upon granting the rule, said, he thought neither the words nor the spirit of the act required it. The point was admitted some few days after by the same counsel who applied for the rule to set the deeds aside for want of enrollment, who said in court, that he had found a case where the same point had been decided; and seeing the opinion of the court, he abandoned that part of his rule; when the court seemed to retain their former opinion.

So in the case of *Dixon* v. *Birch* and *Tyte*, 2 Hen. Blacks. 307. where a rule was granted to shew cause, why an indenture, bond, and warrant of attorney, entered into to secure an annuity, should not be given up to be cancelled, and the money levied under an execution staid in the hands of the sheriff. The facts were simply these; Birch granted the annuity to Dixon, Tyte joining as a security; Dixon assigned the whole of it to Cousins, and the execution issued in the name of Dixon: there was a memorial of the original indenture, bond, and warrant, but none of the assignment from Dixon to Cousins, on the omission of which the application to the court was founded. But after argument, the court held, that as there was a memorial of the original securities enrolled, the object of the statute 17 Geo. III. c. 26. which was the protection of the grantor, was fully complied with, and it was not necessary to enroll the assignment. Rule discharged. [See also *Hood* v. *Burlton*, 4 B. C. C. 121; and *Brown* v. *Like*, 14 Ves. 302.]

The principle of this decision has been so far extended, that where an annuity bond was assigned to secure another annuity of less amount; the Court of Common Pleas held that the second annuitant was not bound to enrol a memorial of the first bond. *Henderson* v. *Glencairn*, 2 Taunt. 235. The enrollment must be, under the old act, within twenty days after the execution of the instrument; how then can the assignee, taking an annuity in 1803, enrol within twenty days

his executors, administrators, and assigns, ALL THAT the said annuity, yearly rent charge, or sum of pounds, in and by the said recited indenture granted and secured, and made payable unto the said [*grantees*], their executors, administrators, and assigns, as therein and hereinafter mentioned; *And* all arrears now due thereon; *Together* with the same indenture; *And* all and every the trusts, powers, remedies, covenants, and agreements, therein mentioned and contained, and thereby created and entered into for securing and enforcing the payment thereof: *And* all the right, title, interest, trust, property, possession, claim, and demand whatsoever, both at law and in equity, of them the said [*grantee*] and [*grantor*], or either of them, of, in, to, or out of the same, and every or any part thereof; TO HAVE, hold, receive, take, and enjoy the said annuity, yearly rent charge, or sum of pounds hereinbefore mentioned to be assigned and confirmed unto the said [*purchaser*], his executors, administrators, and assigns, from the day of now last past, for and during the natural life of the said [*grantor*], *Freed* and absolutely discharged of and from the power or proviso in the said recited indenture contained for redemption or repurchase thereof. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations herein before expressed, the said [*grantee*] *Hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *doth* bargain, sell, assign, transfer, and set over; *And* the said [*grantor*] *hath* ratified and confirmed; *And* by these presents *doth* ratify and confirm unto the said [*purchaser*], his executors, administrators, and assigns, *All that* the said bond or obligation made and entered into by the said [*grantor*] unto the said [*grantees*], in the penal sum of hundred pounds, for better securing to them the payment of the said annuity, or yearly sum of pounds, hereby assigned and confirmed, or intended so to be, and all and every other sum and sums of money thereby secured, or thereupon recoverable; *And*

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Annuity, arrears, indenture, trusts, powers, &c.

All right, &c.

Habendum of annuity.

Freed from repurchase.

Assignment of bond.

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after the execution, a bond given in 1781? [The last case on this subject is *Charrelie* v. *Vause*, 1 Sim. 153, where the same principles were recognised. *Ed.*]

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all other the benefit and advantage thereof; *Together* with full power and authority for him the said [*purchaser*], his executors, administrators, and assigns, in the name or names of the said [*grantee*], his executors or administrators, to receive and recover the same. To HAVE, hold, receive, take, and enjoy the said bond and premises lastly herein before mentioned to be hereby assigned and confirmed unto the said [*purchaser*], his executors, administrators, and assigns, to and for his and their own use and benefit. AND THE SAID [*grantee*], for himself, his heirs, executors, and administrators, doth covenant and declare with and to the said [*purchaser*], his executors, administrators, and assigns, by these presents, That he the said [*grantee*] hath not at any time heretofore, nor hath the said [*deceased grantee*] made, done, executed, committed, or knowingly or willingly suffered any act, deed, matter, or thing whatsoever, whereby or wherewith, or by reason or means whereof, the said annuity, or yearly sum of pounds, monies, securities, powers, and premises hereby assigned and confirmed, or intended so to be respectively, or any of them, or any part thereof, are, is, can, shall, or may be received, released, vacated, avoided, compounded, discharged, impeached, incumbered, or in any way affected. AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, and of ten shillings of lawful money of Great Britain [and Ireland] to the said [*old trustee*] in hand paid by the said [*new trustee*], at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said [*old trustee*], at the request and by the direction of the said [*grantee*], and at the nomination and appointment of the said [*purchaser*], respectively testified by their severally being parties to and executing these presents, *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *doth* bargain, sell, assign, transfer, and set over; *And* the said [*grantor*] and [*grantee*], at the like nomination and appointment of the said [*purchaser*], *have*, and each of them *hath* granted, ratified, and confirmed; *And* by these presents *do*, and each of them

Covenant that surviving and deceased grantee have done no act to incumber.

Assignment of premises for the residue of term to a trustee for assignee.

doth grant, (*c*) ratify, and confirm unto the said [*new*

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(*c*) The word "*grant,*" being of general extent, may amount to a grant, feoffment, gift, lease, release, confirmation, or surrender. Litt. s. 531. Co. Litt. 301. b. 302. a. *Chester* v. *Willan,* 2 Saund. 96 a. And the person to whom it is made may plead or use it for whichever of these purposes he pleases. Co. Litt. 301. b. 4 Cru. Dig. 301. 2d ed. The chief intent of the parties is *to pass* the estate, and *the manner* of doing it ought to be subservient to the end: and though the intent of the grantor is to be regarded *as to what kind of estate* is to pass, *and to whom,* yet his intent is not to be regarded as to the *manner* of passing the estate, of which he is supposed to be ignorant: for it is an established rule, that a deed shall never be void, if by any construction it can be made good. *Earl of Clanrickard's* case, Hob. 277. Shep. Touchstone, 82, 83. Therefore where a man seised in fee of a rent, granted it by deed to one who was his kinsman, and there was an attornment to the grant, but it being made by a person who was not the real tenant of the land, it was, in consequence, void: though the intent appeared that the deed *should operate as a grant at common law with an attornment,* yet as the rent could not pass that way, it was adjudged that the grant being made to a relation, *should operate as a covenant to stand seised. Saunders* v. *Saville,* cited in 3 Lev. 372. So where a man by deed *gives and grants* land to another, and a letter of attorney to make livery is indorsed upon the deed, but no livery happens to be made; yet if this grant be to a relation, *it will operate as a covenant to stand seised;* although the letter of attorney, indorsed on the deed for making livery, shews the plain intent of the deed and of the parties to have been, that the land should pass by feoffment and livery. *Osman* v. *Sheaf,* 3 Lev. 372. S. C. Carth. 307. And where a father, seised of lands in fee, made a deed to his daughter, which was enrolled within six months, expressed to be "in consideration of natural love, augmentation of her portion, and the preferment of her in marriage, and other good and valuable considerations," he "gave, granted, bargained, sold, aliened, enfeoffed, and confirmed" unto the daughter and her heirs, the said lands, and there was a covenant in the deed for peaceable enjoyment, and a clause of warranty, and the deed was enrolled within six months, but there was no other consideration than what was expressed in the deed; it was held, that though the deed could not enure as a *bargain and sale,* no money having passed between them, yet it should operate *as*

General operation of "grant."

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a covenant to stand seised. *Crossing* v. *Scudamore*, 2 Vent. 137. 1 Mod. 175. 179. And where a father, seised in fee of a rent, by indenture, in consideration of affection, and five pounds paid, gave, granted, assigned, and transferred the rent to his son and his heirs; it was held, that there being two considerations expressed, affection and money, the deed might operate as a bargain and sale, if enrolled, or as a covenant to stand seised, if not enrolled. *Baker* v. *Slade*, 3 Lev. 291. S. C. 4 Mod. 150. *Watts* v. *Dixey*, Sty. 204. *Bedell's* case, 7 Rep. 40. b. *Tebbe* v. *Popplethwayte*, 2 Roll. Abr. 786. (O) pl. 1. So where the immediate freehold of lands is granted to a man and his heirs, with a general warranty against all persons whatsoever, and no livery, or a void livery, is made; still if this grant be made to a relation, it shall operate *as a covenant to stand seised;* though the inserting of the warranty shews the intent to have been, that the lands should pass by way of *feoffment;* in which case the feoffee, if impleaded, might vouch upon the warranty: whereas it operating by way of use, as a covenant to stand seised, the grantee is in the *post*, and cannot vouch the grantor to warranty. *Tomlinson* v. *Dighton, Arg.* 1 P. Wms. 163, And where G. S. being seised in fee by indenture between him of the first part, A. S. of the second part, and W. S. of the third part, in consideration of a marriage then intended to be had between him and A. S. and for a competent jointure for A. S. and for a maintenance and provision for her during her life, if she should survive G. S. and for divers other good causes and considerations, gave, granted, released, enfeoffed, conveyed, and confirmed to A. S. and W. S. and their assigns, the premises in question then in G. S.'s possession, *to hold* to the use and behoof of A. S. and her assigns for life, for and in full recompence and satisfaction of the dower which she, by reason of the said marriage, might claim; and after the decease of both G. and A. then to the heirs of the body of A. begotten by G. and in default of such issue, to the use of the right [so in the original, which was full of blunders] of the said G. S. for ever. In the deed were contained covenants by G. S. that he was seised in fee, and had right to convey; "that the said premises should remain and continue unto the uses, intents, and purposes aforesaid," clear of all incumbrances, and for further assurance, as W. S. or his heirs should require. The marriage took effect, and G. and A. S. died, leaving an only child, the lessor of the plaintiff. About five years after executing the above deed, G. S. became a bankrupt, and his assignees, conceiving the deed to be void in law; or if it was not void, that G. S. was seised in tail by it, for a valuable consideration, conveyed the premises in question to one under whom the de-

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fendants claimed. *Doe* v. *Salkeld*, Willes, 674, incorrectly stated by Serj. Wms. and in 4 Cru. Dig. 134. 2d ed. It was resolved by the whole court, that the deed could not operate as a bargain and sale, because there was no pecuniary consideration paid; nor as a release, because there was no lease for a year; nor as a deed of confirmation, because the grantees were neither of them in possession; nor as feoffment, because there was no livery of seisin; and though it seemed to be the intent of the parties that the deed should operate as a common law conveyance, [*sed qu.* this is not stated in *Willes*, and there is no reason for saying it] yet it was resolved by the whole court, that *it should operate as a covenant to stand seised*, whereby an estate in special tail was clearly in A. S.; and that G. S. had only an estate for life by implication, with a reversion in fee. The statement of this case in 2 Wils. 22. by the name of *Doe* v. *Assignees of Simpson*, is a bad report. So in the case of *Roe* v. *Tranmarr*, Willes's Rep. 682. S. C. 2 Wils. 75. where T. K. being seised in fee of certain premises, by lease and release, in consideration of natural love to his brother C. K. and of 100*l.* *granted*, released, and confirmed to the said C. K. the said premises, *after the death* of him the said T. K. *to hold* to the said C. K. and the heirs of his body, and after their decease to J. W. eldest son of his the grantor's well beloved uncle J. W. and his heirs and assigns, and to the only proper use of the said J. W. the younger, his executors, administrators, or assigns for ever; the said J. W. the younger paying to the child or children of his the grantor's brother S. K. 200*l.*, and for want of such children, to other nephews and nieces therein mentioned; and for want of such children the estate was to be free from the payment of the sum of 200*l.*: the release contained covenants from the grantor that he was seised in fee; and that it should be lawful for C. K. or J. W. the younger, after his the grantor's death, peaceably and quietly to hold, &c. and it was thereby covenanted, *granted*, and agreed by and between the said parties, that all fines, recoveries, and other assurances of the said premises already levied, suffered, and executed by and between the said parties, should enure to and for the only use and behoof of C. K., and the heirs of his body; and for want of such issue, to the use of J. W. the younger, his heirs and assigns for ever. At the time of executing the deeds C. K. paid 20*l.* part of the consideration, in money, and gave his note for the remainder; and a receipt was signed by T. K. for the whole sum. T. K. continued seised until his death. C. K. died without issue. It was unanimously resolved, that though the deed would not operate as a release, because it granted a freehold [to commence] in future,

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which cannot by [the rules of the common] law be done, yet the deed of release operated *as a covenant to stand seised,* to the use of J. W.: that all the particular rules, which had been laid down with respect to covenants to stand seised, concurred in that case; of which the lord chief justice said he knew of no other but these. 1. A deed. 2. Words sufficient to make a covenant: there being the word *grant,* that alone would have been sufficient, according to all the cases, if there were no other word; but the grantor likewise expressly covenanted in two places in the deed, that the estate should go to J. W. in such manner as he had granted it. 3. The grantor was actually seised at the time of the grant. 4. The intent of the grantor was plain, that J. W. should have the estate after the death of C. K. without issue, for it is so said in express words in three places in the deed: and lastly, there was a proper consideration to raise the use; for J. W. is called in the deed, eldest son *of his well beloved uncle* J. W.; and indeed if it were not so *said* in the deed, his relation to the grantor might be averred and proved, according to the case of *Goodtitle* v. *Petto,* 2 Str. 934-5. and several cases there cited out of Lord Coke's Reports, S. P. *Filmer* v. *Gott,* 7 Bro. Parl. Cas. 70. *Rex* v. *Inhabitants of Scammonden,* 3 Term Rep. 474; and the court seemed to doubt the authority of *Hore* v. *Dix,* 1 Sid. 25. and *Samon* v. *Jones,* 2 Vent. 318. which are in truth overruled by this case. So, where an estate was limited to A. for life, remainder to B. for life, remainder to C. the eldest son of A. in fee; and A. in the life time of B., in consideration of an annuity of fourteen pounds to be paid to him by C. out of the premises, and for other considerations, did by deed give, grant, surrender, and confirm unto C. and his heirs the said premises; it was held that, though the deed could not operate as a *surrender,* according to the intent of the parties, upon account of B.'s intermediate estate for life, yet there being a consideration of blood between father and son, the conveyance should operate *as a covenant to stand seised. Doe* dem. *Wolley* v. *Pickard. Per* Lord Kenyon, Stafford Summer Assizes, 1797; Wms. n. 1 Saund. 236 c.; but it must be *pleaded* as a covenant to stand seised, and not as a *surrender. Barker* v. *Lade,* 4 Mod. 150. A similar circumstance occasionally occurs in practice; and the validity of many titles depends on this construction. 2 Sand. Uses, 79. 3d ed. Butler's n. Co. Litt. 337. b. (2). See further, *Sleigh* v. *Metham,* 1 Lutw. 789. *Scudamore* v. *Crossing,* 1 Mod. 175. 176. S. C. 2 Lev. 9. *Walker* v. *Hall, Ibid.* 213. *Harrison* v. *Austin,* Carth. 38. 39. *Rigden* v. *Vallier,* 2 Ves. sen. 252. *Goodtitle* v. *Bailey,* Cowp. 599. 600. Upon these cases, it may be observed, that the judges in these later times have had more consi-

deration for *passing* the estate, which is the *substance* of the deed, than the *manner* how, which is the *shadow*. *Osman* v. *Sheafe*, 3 Lev. 372. Wms. n. 2 Saund. 96 a. (1). *Tomlinson* v. *Dighton*, *Arg*. 1 P. Wms. 163. *Et vide* Sugd. Gilb. Uses, 109. 245. 251.

ASSIGNMENT OF ANNUITY BY SURVIVING GRANTEE, FREED FROM REPURCHASE BY GRANTOR.

But the Chief Justice said in the above case of *Chester* v. *Willan*, 2 Saund. 96 a. that if the party in pleading had *pleaded* that he granted, the plea would be bad, for every one must order his plea according to the rules of law; but it is otherwise of a *verdict*, because it is the saying of laymen. So in *Monnington* v. *William*, 1 Vent. 109, it was said by Justice *Twysden*, that where a man in pleading sets forth his title by conveyance, in which are the words give, grant, release, confirm, bargain, sell, &c. he must express to which of them he will use it. S. P. Co. Litt. 301. b. And in *Osmere* v. *Sheafe*, Carth. 308. where the court, being of opinion that the grant of a rent by deed under the circumstances operated as a covenant to stand seised, said, that the defendant had done well in *pleading* it as a conveyance by way of *covenant to stand seised;* for if he had pleaded it as *a grant of the rent*, it would have been void. So where in replevin, the defendant avowed for rent, and pleaded a grant of a rent charge to another, and brought it down by several mesne conveyances to the father of the defendant in fee, and that the father being so seised, by indenture, in consideration of natural love and affection to his son the defendant, and of five pounds paid by him, gave, granted, assigned, and transferred the rent to the defendant in fee, "which said grant, there being no attornment or other execution had thereon, except only the sealing and delivery of the deed, operated by way of covenant to stand seised to the use of the defendant; whereby and by force of the statute for transferring uses into possession," the defendant was seised, and avowed for so much rent in arrear: upon which the plaintiff demurred; and it was resolved by the whole court, that pleading that "no attornment, or any other execution had thereon," and so pleading the special matter, and leaving the determination of the law to the court, was impertinent and idle. 2. It was resolved by the Justices *Powell*, *Rokesby*, and *Ventris*, that pleading in the words of the deed, "that he gave, granted," &c. was sufficient, and the court would construe them according to their legal operation: but they agreed that the defendant might have pleaded this conveyance *as a covenant to stand seised* of the rent to him and his heirs, which they said, would have been more neat pleading: Chief Justice *Pollexfen*, however, held the contrary, and that pleading in the words of the deed was altogether bad, and the defendant ought to have pleaded it at his peril, according as he intended to use it, namely, that his father *covenanted to stand seised to the defendant and his heirs;* and he resembled

A grant must be *pleaded* according to its operation.

ASSIGNMENT OF ANNUITY BY SURVIVING GRANTEE, FREED FROM REPURCHASE BY GRANTOR.

trustee], his executors, administrators, and assigns; ALL THOSE, &c. in and by the said recited indenture demised unto the said [*old trustee*], his executors, administrators, and assigns, for the term of ninety-nine years, determinable on the decease of the said [*grantor*], as therein and herein before mentioned, with the appurtenances: AND all the estate, right, title, interest, trust, property, possession, claim, and demand whatsoever, at law and in equity, of them the said [*old trustee*], [*grantor*], and [*grantee*], and of each and every of them, of, in, to, or out of the same, and every, or any part thereof. TO HAVE AND TO HOLD the said premises hereinbefore mentioned to be hereby assigned and confirmed unto the said [*new trustee*], his executors, administrators, and assigns, henceforth for and during all the residue and remainder of the said term of ninety-nine years thereof, granted as aforesaid, yet to come and unexpired, if the said [*grantor*] should so long live; AT AND UNDER the rent by the said recited indenture reserved; AND UPON THE TRUSTS, and to and for the intents and purposes therein declared and hereinbefore mentioned; BUT *so nevertheless*, that all the benefit and advantage of the trusts by the same indenture declared, or intended in favour of the said [*grantees*], their executors, administrators, and assigns, shall belong to and be received and enjoyed by the said [*purchaser*], his

Parcels.

All the estate.

Habendum.

Subject to rent;

Upon trust for purchaser.

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it to the case where the words "give, grant, release, and confirm," are in a deed, the party who pleads it must rely upon one of them only; and because it was not so done in this case, he was of opinion that judgment ought to be given for the defendant: upon which a writ of error was brought in the K. B. and the judgment was reversed for that cause only, in not pleading according to what *Pollexfen* had held. *Baker* v. *Lade*, 3 Lev. 291. S. C. 4 Mod. 149. Carth. 253. Skin. 315. 2 Vent. 149. *Chaloner* v. *Davis*, 1 Lutw. 570. See Com. Dig. *Pleader*. (C. 37.) And if the deed be by the words "*dedi et concessi*, &c." yet if it operates as a bargain and sale, it ought to be so pleaded. *Taylor* v. *Vale*, Cro. Eliz. 166. See also *Chaloner* v. *Davis*, 1 Ld. Raym. 403. 404. Wms. n. 2 Saund. 97 b. (2).—As to the supposed warranty, arising on the word "grant," *vide ante*, 424. [And as to the doctrines

executors, administrators, and assigns: AND THE SAID [*old trustee*], for himself, his heirs, executors, and administrators, doth covenant and declare with and to the said [*new trustee*], his executors, administrators, and assigns, that he the said [*old trustee*] hath not made, done, executed, or committed, or knowingly or willingly suffered any act, deed, matter, or thing whatsoever, whereby or wherewith, or by reason or means whereof, the premises lastly hereinbefore mentioned to be hereby assigned and confirmed, or the said term of ninety-nine years therein, or any part thereof, respectively are, is, can, shall, or may be impeached, charged, incumbered, or in any way affected. IN WITNESS, &c.

ASSIGNMENT OF ANNUITY BY SURVIVING GRANTEE, FREED FROM REPURCHASE BY GRANTOR.

Covenant by trustee, that he has not incumbered.

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of this note, see the great case of *Cholmondeley* v. *Clinton*, 2 Meriv. 342, and *Doe* v. *Wood*, 2 B. and A. 724. *Ed.*]

BOND ONLY, FOR GRANTOR'S LIFE, REPURCHASABLE.

BOND *for securing an* ANNUITY, *for the* GRANTOR'S LIFE; *without any other Security, either where it is, or where it is not,* REPURCHASABLE.

Obligation, from one to one.

KNOW ALL MEN *by these presents*, that I [*obligor*], of in the county of , [*esquire*], am held and firmly bound to [*obligee*], of in the county of , [*yeoman*], in the sum of [*double the purchase money*] pounds, of lawful money of Great Britain [and Ireland]; to be paid to the said [*obligee*], or to his certain attorney, executors, administrators, or assigns; *For* which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents; *Sealed* with my seal: DATED this day of , in the [year of the reign of our sovereign lord, *George* the *Fourth*, by the grace of God of the united kingdom of Great Britain and Ireland, king, defender of the faith; And in the] year of our Lord, one thousand eight hundred and

Recital of contract for purchase.

WHEREAS the above named [*obligee*] hath contracted and agreed with the above bounden [*obligor*], for the purchase of one annuity or yearly sum of hundred pounds of lawful money of Great Britain [and Ireland], to be paid to the said [*obligee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during the natural life of the said [*obligee*], at or for the price or sum of thousand

Recital of payment.

pounds; AND which said sum of thousand pounds

the said [*obligee*] hath on the day of the date of the above written bond or obligation, paid to the said [*obligor*] [(*a*) in notes of the Governor and Company of the Bank of England, payable to bearer on demand] ; which he the said [*obligor*] doth hereby admit and acknowledge. [(*b*) AND

BOND ONLY, FOR GRANTOR'S LIFE, REPURCHASABLE.

(*a*) It is not necessary that this should be stated in the bond or other assurance, although the manner in which the consideration is paid must be stated in the memorial. *Vide ante*, 331. 335. [354. 357. & 568, *post.*]

Mode of paying consideration need not be stated in the bond, &c.

(*b*) This is not a necessary recital, because it is not required by the act. In *Monys* v. *Leake*, 8 T. R. 411, 416, where under the old act, the whole consideration was paid at the execution of the securities, but a demand was made upon the grantor by the clerk or agent of the grantee's attorney for law charges, which the grantor then paid out of the consideration money, and which it was originally agreed that the grantor should pay; but the deed and the memorial stated that the whole consideration was paid to the grantee, on which ground it was attempted to set aside the securities. Lord Kenyon, in delivering the judgment of the court, said, here no part of the consideration was withheld from the grantor: if any part of the consideration be kept back, under whatever colour, or if there be any improper concealment with a view of eluding the vigilance of those who are to examine the transaction, the whole is void. But here all the consideration money was paid to the grantor, who, being indebted to the person who drew the writings for the expense of those writings under a previous agreement, immediately paid the amount of the bill: it was a payment to his attorney under the previous contract. There is nothing more unreasonable in this, than in his paying any other debt, after receiving the consideration money for the annuity. So in *Phillips* v. *Crawfurd*, 9 Ves. 215. 219, where the objection was as to the payment of the consideration, that 30*l.* was paid at the same time by the grantor to the agent of the grantee for the expense of preparing the deeds; the evidence of the agent as to that being, that, after the transaction was completed, he received from the grantor 30*l.*; whether part of the consideration, or not, he could not say; but that no part of the consideration was *retained* by him: Sir W. Grant, master of the rolls, said, I suppose, generally, a man who wishes to raise money is at the expenses of preparing the deeds by which that money is procured; and when once it is actually in his *possession and power*, it can make no difference, whether he pays the attorney, who prepared the deeds, with part of that money, or any other fund. If an extravagant charge is made, as a colour for reducing the consideration, that is a different case.

If it be agreed that the grantor shall pay for the writings, and he immediately after receiving the consideration money, pay the fair charges of the writings out of that money, no notice need be taken of it in the memorial, but it may be there stated that the whole consideration money was paid to the grantor.

Bill under the old annuity act to set aside an annuity, dismissed; the objection not prevailing, that 30*l.* was immediately after payment of the consideration, paid by the grantor to the attorney, for the expense of the transaction; not by way of colourable reduction of the consideration.

BOND ONLY, FOR GRANTOR'S LIFE, REPURCHASABLE.

Recital that grantor was to pay expenses.

WHEREAS at the time of the contract for the purchase of the said annuity, it was agreed that the costs and charges of procuring the said sum of thousand pounds, upon the said annuity, and of preparing and perfecting the securities for the same, should be borne and paid by the said [*obligor*].]

Condition, payment of annuity,

NOW THE CONDITION of the above written bond or obligation is such, that if the said [*obligor*], should well and truly pay or cause to be paid unto the said [*obligee*], his executors, administrators, or assigns, for and during the natural life of him the said [*obligor*], *One* annuity or yearly sum of hundred pounds of lawful money of Great Britain [and Ireland], free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, (that is to say) on the day of , the

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But nothing of that sort is suggested; as, that part of the 30*l.* got back to the purchaser, &c. If the objection holds, the grantor could not bear even the least proportion of the expense without wholly vitiating the grant; which could not be the intention of the act. Upon an appeal, the Lord Chancellor confirmed his Honour's decree. 13 Ves. 475. [Where it was alleged, after a lapse of eleven years, that the attorney of the grantor received an unreasonable part of the purchase money for the expenses, the court refused to set the annuity aside on this ground. *Mootham* v. *How*, 7 Taunt. 596. But where a large part of the consideration money was retained by the agent of the grantee, for the expense of deeds, securities, &c. the annuity, after a lapse of sixteen years, was set aside on equitable terms. *Williamson* v. *Goold*, 1 Bing. 234. And see *Gorton* v. *Champneys*, 1 Bing. 287. And where the agents of the grantor insisted upon retaining, out of the consideration money, the amount of the money they had before lent him, as well as the charges for preparing the annuity deed, &c., the annuity was set aside, although the grantee was not privy to the demand. *Calton* v. *Porter*, 2 Bing. 370. So where a trifling balance only was detained out of the consideration money, partly to redeem previous annuities and discharge arrears, and partly for the agents for negociating the business, although they had delivered no bill of their charges; the annuity was set aside. *Henry* v. *Taylor*, 3 Bing. 177. See also *Finley* v. *Gardiner*, 6 Barn. and C. 165, and *Jones* v. *Silberschildt*, 4 Bing. 26. As to the practice on setting aside annuities, see *ante*, 358. *post*, 523, and Vol. II. 326. *Ed.*]

day of , the day of , and the day of , in every year, by even and equal portions; the first payment thereof to begin and be made on the day of next ensuing the date of the above written bond or obligation: AND ALSO, if the heirs, executors, or administrators of the said [*obligor*], should well and truly pay or cause to be paid unto the said [*obligee*], his executors, administrators, or assigns, in case the said [*obligor*] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of hundred pounds shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum shall have become due, Then a proportionable part of the quarterly payment of the said annuity or yearly sum of hundred pounds, to be computed from the day of the date of the above written bond or obligation to the day of the death of the said [*obligor*]; *But* in case any quarterly payment of such annuity or yearly sum of hundred pounds should have become due at the time of the decease of the said [*obligor*], then from such of the said quarterly days of payment of the said annuity or yearly sum of hundred pounds, as shall happen to be next and immediately preceding the day of the death of the said [*obligor*], to the day of his decease; *Then* the above written bond or obligation shall be void and of no effect, otherwise shall be and remain in full force and virtue (*c*).

BOND ONLY, FOR GRANTOR'S LIFE, REPURCHASABLE.

and proportional part.

(*c*) If the annuity be repurchasable, add,

ANNUITY REPURCHASABLE. Declaration enabling grantor to repurchase, on giving six months' notice, and repaying original purchase money, and half a year's annuity in advance.

"AND if the said [*obligor*] should at any time (after the expiration of three years) from the date of the above written bond or obligation, give unto the said [*obligee*], his executors, administrators, or assigns, notice in writing, by the space of six calendar months, of his intention to repurchase the said annuity or yearly sum of hundred pounds; and should at the end of the said six calendar months from the time such notice shall be given as aforesaid, pay unto the

BOND ONLY, FOR GRANTOR'S LIFE, REPURCHASABLE.

said [*obligee*], his executors, administrators, or assigns, all and every sum and sums of money whatsoever that shall then be due for the arrears of the said annuity, together with a proportionable part thereof from the last day of payment preceding such repurchase, up to the day of repurchasing the same as aforesaid; and also the sum of . . thousand and pounds, being the original purchase money of the said annuity, and half of a year's annuity in advance, as and in full for the repurchase of the said annuity or yearly sum of . . hundred pounds above secured; *Then* and in such case the said annuity or yearly sum of hundred pounds shall cease and determine, and be no longer paid or payable, and the above written bond or obligation shall be void and of no effect."

SEALED AND DELIVERED in the presence of

BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR GRANTEE'S LIFE.

BOND *for securing an* ANNUITY *for the* GRANTEE'S *Life; either without any other Security, or with a* WARRANT OF ATTORNEY *to confess Judgment on the Bond; and either where the Annuity is, or where it is not* REPURCHASABLE.

Obligation.

KNOW ALL MEN *by these Presents*, That I [*grantor*], of, &c. (*common Form of Obligation, from one to one*, ut ante, 459.)

Recital of contract for purchase.

WHEREAS the above named [*obligee*] hath contracted and agreed with the above bounden [*obligor*] for the purchase of one annuity or yearly sum of pounds of lawful money of Great Britain [and Ireland], to be paid to the said [*obligee*], free from taxes and clear of all other deductions whatsoever, for and during the natural life of the said [*obligor*], at or for the price or sum of pounds; and which said sum of pounds, the said [*obligee*] hath on the day of the date of the above written bond or obligation paid to the said [*obligor*]; which he the said [*obligor*] doth hereby admit and acknowledge.

Recital of paying consideration money.

To be secured by bond.

AND WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of pounds, it was agreed that the same should be secured by the bond or obligation of the said [*obligor*] (*a*).

Recital of agreement, that obligor was to pay charges.

[(*b*) AND WHEREAS at the time

WARRANT OF ATTORNEY.

(*a*) If there be a warrant of attorney to confess judgment, add, "and by his warrant of attorney to confess a judgment thereon."

(*b*) *Vide ante*, 460 (*b*).

BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR GRANTEE'S LIFE.

of the contract for the purchase of the said annuity, it was agreed that the costs and charges of procuring the said sum of pounds upon the said annuity, and of preparing and perfecting the securities for the same, should be borne and paid by the said [*obligor*].

Condition, for

NOW THE CONDITION of the above written bond or obligation is such, that if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*obligee*] or his assigns, for and during the natural life of him the said

payment of annuity for obligee's life,

[*obligee*], *One* annuity or yearly sum of pounds of lawful money of Great Britain [and Ireland], free from taxes, and clear of all other deductions whatsoever, on four days or times in the year (that is to say), on the day of , the day of , the day of , and the day of , in every year, by even and equal portions; the first payment thereof to begin and be made on the day of next ensuing the date of the above written

with proportional part to his death.

bond or obligation: AND ALSO if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the executors, administrators, or assigns of the said [*obligee*], in case the said [*obligee*] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of pounds shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum of pounds shall have become due, then a proportionate part of the quarterly payment of the said annuity or yearly sum of pounds, to be computed from the day of the date of the above written bond or obligation to the day of the death of the said [*obligee*]; *But* in case any quarterly payment of such annuity or yearly sum of pounds shall have become due at the time of the decease of the said [*obligee*], then from such of the said quarterly days of payment of the said annuity or yearly sum of pounds, as shall happen to be next and immediately preceding the day of the death of the said [*obligee*] to the

day of his decease; *Then* the above written bond or obligation shall be void and of no effect, otherwise shall be and remain in full force and virtue (*c*).

BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR GRANTEE'S LIFE.

(*c*) If the annuity be repurchasable, add,

REPURCHASABLE.

Clause of repurchase in a bond for securing an annuity for the grantee's life.

"And if the said [*obligor*], his heirs, executors, administrators, or assigns, should at any time (after the day of in the year one thousand eight hundred and) be desirous of repurchasing the said annuity of pounds, and should give to the said [*obligee*], or his assigns, calendar months notice in writing of such his or their desire; and upon the expiration of the said notice, or at any time afterwards, and upon giving calendar months notice as aforesaid, should well and truly pay, or cause to be paid unto the said [*obligee*], or his assigns, the sum of pounds, and also all and every sum and sums of money which shall be then due and owing to the said [*obligee*], or his assigns, for or on account of the said annuity of pounds, and also a proportionable part of the same annuity up to and inclusive of the day or time of paying the said sum of pounds, *Then*, and in such case, the said [*obligee*], or his assigns, shall and will deliver the above written bond or obligation to the said [*obligor*], his heirs, executors, administrators, or assigns, cancelled, or to be cancelled and destroyed (*d*); or otherwise assign the same (*e*) in such manner as the said [*obligor*], his heirs, executors, administrators, or assigns, shall direct or appoint."

(*d*) If there be a warrant of attorney, add,

WARRANT OF ATTORNEY.

"and acknowledge satisfaction on the record of the judgment to be entered up by virtue of the said warrant of attorney;"

(*e*) "respectively,"

BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR NOMINEES' LIVES, REPURCHASABLE BY INSTALMENTS.

BOND *for securing an* ANNUITY *for the Lives of* NOMINEES, *and the Lives and Life of the Survivors and Survivor of them; either without any other Security, or with a* WARRANT OF ATTORNEY *to confess Judgment on the Bond; and either Repurchasable by one Payment, or* REPURCHASABLE BY INSTALMENTS, *not being less at any one Time than a certain Part of the Annuity.*

Obligation.

KNOW ALL MEN *by these Presents,* That I, [*grantor*], of, &c. (*common Form of Obligation from one to one,* ut ante, 459.)

Recital of contract for purchasing annuity.

WHEREAS the above named [*obligee*] hath contracted and agreed with the above bounden [*obligor*], for the purchase of one annuity, or yearly sum of pounds, of lawful money of Great Britain [and Ireland], to be paid to the said [*obligee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during the natural lives of [*nominees*], of &c. and the (lives and) life of the (survivors and) survivor of them, at or for the price or sum of pounds. AND WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of pounds, it was agreed that the same should be secured by the bond or obligation of the said [*obligor*] (and by his warrant of attorney to confess a judgment thereon in his Majesty's Court of King's Bench, at Westminster). [(*a*) AND WHEREAS upon the treaty for the purchase of the said annuity or

To be secured by obligor's bond (and warrant of attorney), at obligor's expense.

(*a*) *Vide ante,* 460 (*b*).

yearly sum of pounds, it was likewise agreed, that all costs, charges, and expenses attending the said contract, and for preparing and perfecting the several securities of the same, and for preparing and inrolling a memorial thereof, should be borne and paid by the said [*obligor*].] AND WHEREAS the said [*obligee*] hath, on the day of the date of the above written bond or obligation, [in (*b*) his own proper person,] paid to the said [*obligor*] [in (*c*) his own proper person,] the said sum of pounds, which he the said [*obligor*] doth hereby admit and acknowledge; [out (*d*) of which said sum of pounds, the said [*obligor*], immediately after receiving the same, paid to [*solicitor*], of, &c. the sum of pounds, for attendances respecting the granting of the said annuity, and for preparing and perfecting the several securities for the same, and preparing and inrolling a memorial thereof.]

BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR NOMINEES' LIVES, REPURCHASABLE BY INSTALMENTS.

And payment of consideration money.

NOW THE CONDITION of the above written bond or obligation is such, that if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto the said [*obligee*], his executors, administrators, or assigns, for and during the natural lives of the said [*nominees*], and the (lives and) life of the (survivors and) survivor of them, One annuity or yearly sum of pounds of lawful money of Great Britain [and Ireland], free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say, on the day of , the day of , the day of , and the day of , in every year, by even and equal portions; the first payment thereof to begin and be made on the day of next ensuing the day of the date of the above written bond or obligation; AND ALSO if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto the said [*obligee*], his executors, administrators, or assigns, in case the survivor of them the said [*nominees*] should happen to depart this life on any day on which any quarterly payment of the

Condition for payment of annuity,

and proportional part.

(*b*) *Vide postquam*, 485 (*b*). (*c*) *Vide postquam*, 489 (*c*).
(*d*) *Vide ante*, 460 (*b*).

BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR NOMINEES' LIVES, REPURCHASABLE BY INSTALMENTS.

said annuity or yearly sum of pounds shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum of pounds shall have become due, then a proportionable part of the quarterly payment of the said annuity or yearly sum of pounds, to be computed from the day of the date of the above written bond or obligation, to the day of the death of the survivor of them, the said [*nominees*]; *But* in case any quarterly payment of such annuity or yearly sum of pounds should have become due at the time of the decease of the survivor of them the said [*nominees*], then from such of the said quarterly days of payment of the said annuity or yearly sum of pounds as shall happen to be next and immediately preceding the day of the death of the survivor of them the said [*nominees*], to the day of the death of such survivor; *Then* the above written bond or obligation shall be void, and of no effect (*e*).

REPURCHASABLE, *by one payment;*

(*e*) If the annuity be repurchasable by one payment, add, *ut ante*, 462 *or* 465; adding, after the name of the *obligor*,

"his heirs, executors, or administrators."

And adding, after the name of the *obligee*,

"his executors, administrators, or assigns."

by instalments.

If the annuity be repurchasable at one time, or by instalments, add,

Recital of agreement for repurchase of the whole at one time, or by instalments, giving three months notice.

"AND WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of pounds hereinbefore mentioned, it was mutually agreed by and between the said [*obligor*] and [*obligee*], that the said [*obligor*], his heirs, executors, administrators, or assigns, should at any time or times thereafter be at liberty to repurchase the said annuity or yearly sum of pounds, or any part thereof, not being less at any one time than (ten) pounds per annum, at the rate or price of (seventy) pounds for the purchase of every (ten) pounds per annum, and so in proportion for any larger sum, upon giving the said [*obligee*], his executors, administrators, or assigns, (three) months previous notice of such his or their intention to repurchase the said

annuity, or any part thereof, until the whole of the said annuity should be redeemed.

BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR NOMINEES' LIVES, REPURCHASABLE BY INSTALMENTS.

NOW IT IS HEREBY DECLARED, That in case the said [*obligee*], his executors, administrators, or assigns, should at any time or times hereafter be minded and desirous of repurchasing the said annuity or yearly sum of pounds, or any part thereof, not being less at any one time than (ten) pounds per annum; and of such his or their intention should give unto the said [*obligee*], his executors, administrators, or assigns, (three) months previous notice in writing, of what part of the said annuity the said [*obligor*], his heirs, executors, or administrators, shall be desirous of repurchasing, not being less at any one time than (ten) pounds per annum, *Then* he, the said [*obligee*], his executors, administrators, or assigns, shall and will, from time to time, on receiving such sum and sums of money as shall be due for the said annuity, and all arrears thereof, upon the day of repurchasing such part or parts thereof, at the expiration of such (three) months from the time of giving such notice or notices, accept, receive, and take (seventy) pounds for the repurchase of (ten) pounds per annum of the said annuity, and so in proportion for any larger sum that shall be expressed in such notice or notices, and shall be so desired to be paid off as aforesaid: AND on receiving such repurchase money for any such part or parts of the said annuity as aforesaid, that he the said [*obligee*], his executors, administrators, or assigns, shall and will, from time to time, at the request, costs, and charges of the said [*obligor*], his heirs, executors, administrators, or assigns, execute such reasonable and proper assignments or declarations of trust, of such part or parts of the said annuity as shall be so repurchased, unto or in favour of the said [*obligor*], his heirs, executors, administrators, or assigns, or of such person or persons as he or they shall direct or appoint; *Or* otherwise shall and will, from time to time, release and discharge the said [*obligor*], his heirs, executors, administrators, and assigns, from the payment of such part or parts of the said annuity as shall be so repurchased as afore-

Declaration, giving the obligor a right to repurchase by instalments.

BOND ONLY OR WITH WARRANT OF ATTORNEY, FOR NOMINEES' LIVES, REPURCHASABLE BY INSTALMENTS.

said: AND on receipt of the whole of the money for the repurchase of the said annuity or yearly sum of pounds, and all arrears of the said annuity, and such proportionable part thereof as aforesaid, the said [*obligee*], his executors, administrators, or assigns, shall and will deliver to the said [*obligor*], his heirs, executors, administrators, or assigns, the above written bond or obligation, to be cancelled and destroyed (and acknowledge, or cause to be acknowledged, satisfaction on the record of the judgment to be entered up by virtue of the said warrant of attorney); or otherwise assign the same (respectively) in such manner as he or they shall direct and appoint."

SEALED AND DELIVERED by the above named [*obligor*], and [*obligee* (*d*)], in the presence of

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Bond having mutual agreement not mentioned elsewhere, should be executed by obligee.

(*d*) When there is any mutual agreement in a bond (such as the above, for repurchase by instalments), requiring something to be done by the obligee, and which is not mentioned in some collateral instrument executed by the obligee, he should execute the bond; and the obligor should have an *examined* copy of it, at the least.

BOND ONLY, WITH SURETY, REPURCHASABLE.

BOND *for securing an* ANNUITY *for the* GRANTOR'S LIFE, *with a* SURETY (*a*); *either where the Annuity is* REPURCHASABLE *by the Grantor, or by his Surety, or where it is not repurchasable.*

(*a*) Where an annuity bond granted by two became void by the neglect of the grantee in not registering a memorial under the statute, it was decided that he could not recover back any part of the consideration money from the one *who was known* to be only a *surety* for the other, and had not in truth received any part of it, notwithstanding they both joined in signing a receipt for it; a receipt not being *conclusive* evidence against the party who signs it. *Stratton* v. *Rastall*, 2 Term Rep. 366. [And see, as to the liability of surety, *Williamson* v. *Goold*, 1 Bing. 171.]

Consideration money cannot be recovered from surety for payment of annuity.

The principal's certificate under a commission of *Bankrupt*, is no bar to the creditor's proceeding against the sureties. Ex parte *Williamson*, 1 Atk. 84. *Inglis* v. *Macdougal*, 1 Moore, 196. 1 Montagu's Bankrupt Laws, 361, 2d ed. [See 6 Geo. IV, c. 16. s. 55, *infra*.]

Surety liable, though principal be *bankrupt*.

Before the 49 Geo. III. c. 135. s. 8, * if the creditor recovered from a surety after the bankruptcy of the principal, and the surety afterward proceeded against the principal, the certificate was not any bar to the claim of the surety; because at the time of the bankruptcy, the bankrupt was not indebted to the surety; he therefore could not be a creditor under the commission, not being *damnified* at that time: and *till damnified*, (which he could not be till he had been called upon and had paid) he could not bring an action: and as he did not pay till after the commission issued, consequently, his whole damage and cause of action arose *after the bankruptcy*; and therefore could not be discharged by the certificate. *Per* Lord Mansfield, *Taylor* v. *Mills*, Cowp. 527. *Young* v. *Hockley*, 3 Wils. 346. *Donnelly* v. *Dunn*, 2 Bos. and Pull. 45.

Before 49 Geo. 4. c. 135, bankrupt was liable to surety after certificate.

* [This section is comprised in the 52d and 55th sections of the late Bankrupt Act, 6 Geo. IV. c. 16, which see, *infra*. *Ed.*]

BOND ONLY, WITH SURETY, REPURCHASABLE.

Sureties of bankrupts having paid any debt after the commission, may prove under the commission.

But by the 49 Geo. III. c. 121. s. 8, it was enacted "that in all cases of commissions of bankrupt already issued, under which no dividend has yet been made, or under which the creditors, who have not proved, can receive a dividend equally in proportion to their respective debts without disturbing any dividend already made, and in all cases of commissions of bankrupts hereafter to be issued, where at the time of issuing the commission any person shall be surety for or be liable for any debt of the bankrupt, it shall be lawful for such surety or person liable, if he shall have paid the debt, or any part thereof in discharge of the whole debt, although he may have paid the same after the commission shall have issued, and the creditor shall have proved his debt under the commission, to stand in the place of the creditor as to the dividends upon such proof; and when the creditor shall not have proved under the commission, it shall be lawful for such surety or person liable, to prove his demand in respect of such payment, as a debt under the commission; not disturbing the former dividends, and to receive a dividend or dividends proportionably with the other creditors taking the benefit of such commission, notwithstanding such person may have become surety or liable for the debt of the bankrupt, after an act of bankruptcy had been committed by such bankrupt; *provided* that such person had not at the time when he became such surety, or when he so became liable for the debt of such bankrupt, notice of any act of bankruptcy by such bankrupt committed, or that he was insolvent, or had stopped payment; *provided always*, that the issuing a commission of bankrupt, although such commission shall afterwards be superseded, shall be deemed such notice; *And* every person against whom any such commission of bankrupt has been or shall be awarded, and who has obtained or shall obtain his certificate, shall be discharged of all demands, at the suit of every such person having so paid, or being hereby enabled to prove as aforesaid, or to stand in the place of such creditor as aforesaid, with regard to his debt in respect of such suretyship or liability, in like manner to all intents and purposes as if such person had been a creditor before the bankruptcy of the bankrupt, for the whole of the debt in respect of which he was surety, or was so liable as aforesaid *.

Issuing commission notice, although afterwards superseded.

Certificate of bankrupt discharges him from liability to surety.

Annuity creditors may prove for the value of the annuity, under the commission of bankrupt.

By s. 17. it was enacted, "that it shall be competent to any annuity creditor of any person against whom a commission of bankrupt shall issue after the passing of this act, whether the same shall be secured by bond *or* covenant, or bond *and* covenant, or by whatever assurance or assurances the same shall be secured, and whether there shall or shall not be or have been any arrears of such annuity at or before the

* [Now incorporated in secs. 54 & 55 of the 6th Geo. IV. c. 16. *infra*. *Ed.*]

time of the bankruptcy, to prove under such commission as a creditor for the value of such annuity, which value the commissioners shall have power and are hereby required to ascertain; and the certificate of every bankrupt under whose commission such proof shall be *or might have been made*, shall be a discharge of such bankrupt against all demands whatever in respect of such annuity, and the arrears and future payments thereof, in the same manner as such certificate would discharge the bankrupt with respect to any other debt proved, or which might have been proved under the commission."

BOND ONLY, WITH SURETY, REPURCHASABLE.

Certificate of bankrupt is a discharge from payment of annuity.

In *Stedman* v. *Martinnant*, 13 East, 427, the plaintiff having accepted a bill payable at a future day for the accommodation of the defendant, the latter afterwards, and before the bill became due, committed an act of bankruptcy, followed by a commission, which was afterwards superseded; and time was given to the bankrupt by his creditors; and the plaintiff thereupon accepted another bill for the same debt, with the addition of interest and stamp: it was held that this was a continuation of the same suretyship by the plaintiff for the defendant, which existed before the act of bankruptcy and the first commission; and a second effectual commission having afterwards issued upon the same act of bankruptcy, before the plaintiff's second acceptance became due, which was paid when due, it was held that the amount was proveable as a debt under such commission, by virtue of the 49 Geo. III. c. 121. s. 8, and was consequently barred as a personal demand against the bankrupt by his certificate. Lord Ellenborough, in delivering the judgment of the Court, said, the giving of the second acceptance upon the new bill for the prior debt, did not discharge the original debt, for which the plaintiff had become surety before the act of bankruptcy; and in paying that second bill, the plaintiff was only paying the same debt which he was liable to pay as surety for the defendant upon the first bill. Then is not this a case within the 8th section of the statute referred to; by which the surety for a debt proveable under a commission, though not paid by him till after the issuing of the commission, shall stand in the place of the original creditor as to the whole of the debt so paid? The act however provides, that this shall not extend to one, who when he became surety had either notice in fact of the act of bankruptcy committed, or implied notice from the issuing of a commission, though such commission were afterwards superseded. But in order to affect the plaintiff's debt with such implied notice, it was necessary for him to bring down the commencement of the suretyship to a period subsequent to the issuing of such commission afterwards superseded, which he has failed to do; and therefore it stands as a debt which was proveable under the commission, and is consequently barred by the defendant's certificate.* [See *Soutten* v. *Soutten*, 5 B. & A. 582.]

Surety liable to a debt of bankrupt before commission, cannot sue him after certificate.

* [But the giving a fresh security by the surety is not equivalent to

BOND ONLY, WITH SURETY, REPURCHASABLE.

In *Wood* and another v. *Dodgson*, 2 Maule and Selw. 195, where, upon a dissolution of partnership between three partners, two of the three assigned to the other all their shares in the partnership debts and effects, and the other covenanted to pay all debts then due from the partnership, and to indemnify the two from the payment of the same, and from all actions and costs by reason of the non-payment of the same, and afterwards became bankrupt, and a commission issued against him, under which he obtained his certificate; and afterwards the holder of a bill, accepted by the three partners, and due before the dissolution of the partnership, sued the two, and they were obliged to pay the bill. Held, that by stat. 49 G. 3. c. 121. s. 8, the certificate might be pleaded in discharge of an action brought by the two against the other, upon his covenant. Lord Ellenborough, Chief Justice, said, This is quite a new case, and depends entirely upon the words of the statute; but I cannot help thinking it falls within them. Before the statute, this debt could not have been proved under the commission. The statute does indeed seem to impose a hardship on the plaintiffs; but at the same time, they will not be in a much worse situation than if they were to pursue a fruitless suit. The words of the statute are, "where any person shall be surety for, or liable for, any debt of the bankrupt." Here the plaintiffs have assigned all their interest in the partnership effects, in consideration of a covenant of indemnity on the part of the bankrupt, which left them still liable as before to the original creditors of the partnership: they were liable at law as co-debtors with the bankrupt for his and their own debt; but in equity he was solely liable, and they were sureties; for by the covenant he became, as between the parties to the covenant, the principal debtor—the debt was his debt, although as to other parties the plaintiffs still remain liable; and therefore, when they paid this debt, they paid it in his discharge. I cannot therefore say that this case does not fall within the act of parliament, which does not merely contemplate legal, but equitable liability.—Mr. Justice Le Blanc said, The words "liable for any debt of the bankrupt," are large enough to comprehend this case; and we are to see that the case falls within the remedy which the act proposed to hold out in favour of bankrupts. Before the act, the original debt would have been barred by the certificate; and the remedy proposed seems to have been, that when any person at the issuing of the commission should be surety for, or liable for the original debt of the bankrupt, the bankrupt should be relieved in the same manner from

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payment; and therefore where, after the bankrupt's certificate, he joined in a new bond to the creditor, and the old bond was delivered up to him, the surety was holden not entitled to prove. Ex parte *Sergeant*, 1 Glyn. and Jam. 183. *Ed.*]

all claims of such person arising out of the original debt, although the cause of action arose after the bankruptcy. Where the words therefore are large enough, and it appears that the remedy was intended, I rather think we ought to give effect to it.—Mr. Justice Bayley said, The intention of the legislature, at the same time that they relieved the bankrupt, was to confer a benefit also on the surety, or person who was liable for the debt of the bankrupt. The principal creditor might have proved under the commission, or might have resorted to the surety, without proving under the commission; therefore, before the act, he might have compelled the surety to pay the whole amount, without the surety's having any benefit under the commission. This clause, therefore, was intended to remove that inconvenience, and to give to the surety the power of obtaining a dividend in respect of his debt. In this case, if the plaintiffs have let slip their time, by not making so early a claim as they might, that was their own fault; because they ought to have known that this was an outstanding debt, for which the bankrupt's estate was liable. And Mr. Justice Dampier said, It seems to me, that this case falls within the words of the act. As before the act, the surety was thrown on the future estate of the bankrupt: the act, by allowing him to prove on the bankrupt's estate, may be a benefit both to the bankrupt and the surety: on the other hand, it may happen that the surety is not compelled to pay the money until the whole estate is gone. It is to be presumed, that the legislature balanced these inconveniences, and determined upon the whole to give a benefit to the bankrupt, by putting the surety upon the bankrupt's estate. I think we cannot get out of the act. [See also Exparte *Ogilvy*, 3 V. & B. 35.]

BOND ONLY, WITH SURETY REPURCHASABLE.

In *Hewes* v. *Mott*, and *Dalby* v. *Mott*, 2 Marsh. 192,* a rule had been obtained, calling on the plaintiffs in each of these actions to show cause why the defendant should not be discharged out of custody, he having become bankrupt and obtained his certificate. The plaintiffs had been bail for the defendant in a former action, and being fixed with the debt, paid a composition after the commission issued. The ground of this application was, that "at the time of issuing the commission, they were sureties for," or at least, "were liable for the debt of the bankrupt," and therefore might prove under the commission, by virtue of the 49 Geo. 3. c. 121. s. 8.—Lord Chief Justice Gibbs, in delivering the judgment of the Court, said, on considering the act, we do not think that bail are to be considered as *sureties* for, or as *liable for the debt* of the bankrupt, within the meaning of the act. They enter into a bond for the defendant's *appearance*, and their immediate responsi-

Bail are not to be considered as sureties for, or as liable for the debt of a bankrupt, within the meaning of 49 G. 3. c. 121. s. 8.

* [The doubt in this case, and the case of *Newington* v. *Keeys*, 4 Barn. & A. is expressly provided for by the 52d sec. 6 Geo. IV. c. 16, *infra*. *Ed.*]

BOND ONLY, WITH SURETY, REPURCHASABLE.

bility is to the sheriff. Being a question of general importance, we have communicated with the Court of King's Bench on the subject; and they agree with us in thinking, that bail are not to be considered as sureties within the act; and therefore the rule was discharged.

The bankruptcy, and certificate of one of several joint grantors of an annuity, and covenantors for payment, discharge the bankrupt, but not his co-defendants.

In *Baxter* v. *Nichols*, 4 Taunt. 90, the defendant, who was a surety, had, with three others, jointly and severally granted, by a deed to the plaintiff, an annuity, and jointly and severally covenanted for the payment, which was further secured by a warrant of attorney to confess joint and several judgments. A joint judgment upon the covenant had been entered up against the four, and execution had issued, and a levy had been made upon the goods of Nichols, for whom a rule *nisi* had been obtained to set aside the execution, judgment, and warrant of attorney, upon affidavits, which stated, that since the grant of the annuity, the defendant Nichols had become a bankrupt, and obtained his certificate; the consequence of which was conceived to be, that under the statute 49 G. 3. c. 121. s. 17, the annuity was vacated, and all the securities had become void. Lord Chief Justice Mansfield said, he saw no reason why the plaintiff might not proceed on the joint judgment against the other three, though the fourth was discharged by bankruptcy. The *fieri facias*, which was against four, was therefore not to be set aside, except so far as related to this particular man; as to him, the rule must be absolute *pro tanto*. And Mr. Justice Chambre said, the act is very defective; it makes no distinction between principal and surety. It introduces an almost insuperable objection to giving it effect in a court of law in any case of joint grants of annuities; for, by the act, a value is to be put on the whole annuity, and a dividend to be paid on that. Then what is afterwards to be done in a court of law, suppose the plaintiff wishes to proceed against a solvent grantor for the arrears of the annuity? It would drive the parties into a court of equity; for a court of law has no means to apportion the yearly value. Perhaps a court of equity might put the party to his election, to say whether he would proceed and receive the dividend, or not; but how can a court of law do that? The clause is very defective, for it does not declare what shall be the consequence of the bankruptcy of a grantor with respect to others: it would have been better if the legislature had declared that. Perhaps it might have been as well if they had given the annuitant the option, either to require from the other solvent persons the residue of the ascertained value, or that the annual payment should thenceforth be reduced in the same rate as the dividend bears to the whole assessed value. The object of this clause was merely to discharge the bankrupt and his future effects; but the rule which is pronounced, will not prevent the plaintiff from proceeding against the other three, as he might otherwise have done.—Rule absolute to set aside the levy.

BOND ONLY, WITH SURETY, REPURCHASABLE.

A surety in an annuity deed, who is compelled by the annuity creditor, after the bankruptcy and allowance of certificate of the principal, to pay several sums for arrears due after the issuing of the commission, is not within stat. 49 G. 3. c. 121. s. 8, and therefore may have an action against the principal for such sums, and hold him to bail.

In *Welsh* v. *Welsh*, 4 Maule and Selw. 333, the plaintiff became surety for the defendants in an annuity deed, and afterwards the defendants became bankrupt, and obtained their certificate, and the plaintiff, after the allowance of the certificate, was called upon and compelled by the annuity creditor to pay several sums for arrears of the annuity due, after issuing the commission; to recover which, he brought this action, and held the defendants to bail. And upon a rule *nisi* for discharging the defendants on common bail, upon the ground of their bankruptcy and certificate, Abbott shewed cause, and contended that this was not a case in which the plaintiff could, by stat. 49 G. III, c. 121. s. 8, have come in and proved under the commission; for this was not a debt at the time of issuing the commission, nor was he called on to pay it until after the certificate. And sec. 17 only applies to the annuity creditor, but not to enable the surety to come in and prove.—Peake *contrâ*, contended that the act meant to place the surety in the condition of being able to come in under the commission, and have the value of the annuity ascertained by the commissioners; and he cited *Stedman* v. *Martinnant*, 12 East, 427, *ante*, 473.—Lord Ellenborough, Chief Justice, said, the surety cannot compel the annuity creditor to come in and prove; and it is not a debt *quoad* the surety, until he is in a condition to be damnified by it. If the legislature intended such a case as this, they have not so said, nor have they used language sufficiently clear to enable us so to say. And Mr. Justice Le Blanc said, by sec. 17, the annuity creditor, whether there shall or shall not be arrears due, may prove for the value of the annuity.—Rule discharged. [See *Watkins* v. *Flanagan*, 3 B. & A. 186. 11 Pri. 24. 1 Bing. 413. 8 J. B. Moo. 480. Glyn. & Jam. 199. 6 Mad. 280.]

But the above decision is unsatisfactory*.

It was necessary to state these cases thus in detail; because, it is conceived, that the decision in *Welsh* v. *Welsh*, is directly contrary to the 8th and 17th sections of the 49 Geo. III. c. 121, *ante*, 472; and also contrary to the other decisions before stated, but particularly to *Baxter* v. *Nicholls*, *ante*, 476: and it is observable, that Lord Ellenborough used the very words and reasoning of Lord Mansfield in *Taylor* v. *Mills*, Cowp. 527, *ante*, 471, which was perfectly correct as to the law before the late act. In *Welsh* v. *Welsh*, the 8th sec. of the act was not pressed on the court, and it was disregarded, most probably through inadvertence. *Vide* 2 Montagu's Bankrupt Laws, 155, 2nd ed. who appears also to be dissatisfied with the decision in *Welsh* v. *Welsh*.

Consideration for annuity may be proved in bankruptcy,

If an annuity be void, the creditor may prove for the consideration that is due: but it has been determined, that if he insist upon his securities at the date of the commission, he cannot afterwards abandon

* [The doubt here raised in this and other subsequent cases, is provided for in the 55th sec. of the 6th Geo. IV. c. 16, *infra*. *Ed.*]

BOND ONLY, WITH SURETY, REPURCHASABLE.

them and prove the consideration. Exparte *James*, 5 Ves. 708, *sed quære* as to the latter part of the rule. 1 Montagu's Bankrupt Laws, 211, 2nd ed. If the deeds for securing an annuity are void, the consideration is proveable under a commission against the grantor of the annuity, although the instruments are not actually set aside till the bankrupt has obtained his certificate. *Walker* v. *Liscarry*, 6 Esp. N. P. C. 98. If an annuity be not enrolled, from a fraudulent representation that it is secured upon lands in fee simple of equal annual value, and so not within the statute, it seems that the value of the annuity is proveable. Exparte *Wright*, 1 Rose, 308. 19 Ves. 255, S. C. A bond for the absolute payment at fixed periods of an annuity for a term of years, is proveable under a commission of bankrupt, issued against the grantor of the annuity. *Pattison* v. *Banks*, Cowp. 540. [See also *Shove* v. *Welsh*, 1 T. R. 732, Exparte *Blochliss*, Buck, 406, and *Winter* v. *Mouseley*, 2 B. and A. 802.]

after securities are set aside.

Commissioners of bankrupt must value annuities according to evidence.

The intention of the legislature in directing the commissioners to ascertain the value of the annuity, was not that the commissioners should have the power to fix the value, but that they should decide according to evidence, with respect to the value. Ex-parte *Thistlewood*, 1 Rose, 290. In general, the value to be proved is the original sum given for the purchase of the annuity, with the diminution occasioned by the lapse of time since the grant. Exparte *Whitehead*, 1 Meriv. 127. But under particular circumstances, the value at the time of the proof may be much greater than at the time of the original purchase; thus, if the grantor of an annuity be in an infirm state of health when the annuity is granted, and the purchase be made with relation to his weak state of health, and the grantor afterwards recover and become bankrupt, the purchaser of the annuity may prove a greater sum than the original purchase money. Exparte *Thistlewood*, 1 Rose, 290, 19 Ves. 237, S. C. *

Set-off may be pleaded.

A set-off may be pleaded to an action for the arrears of an annuity, *Collins* v. *Collins*, 2 Burr. 820. But where A purchased an annuity of 200*l.* for 2000*l.* to be paid after her death; the grantor becoming bankrupt and indebted to her in 2275*l.* 5*s.* 9*d.*: it was decided, that the annuitant was not entitled to set off the 2000*l.* against the 2275*l.* 5*s* 9*d.* for as she could not be compelled to pay in advance, the bankrupt

* [The doubts raised in these cases, and in Exparte *Key*, 1 Madd. 428, are removed by the 6th Geo. IV, c. 16, sec. 54. Arrears of annuities, subsequent to the date of the commission, are not the subject of proof. Exparte *Slack*, 1 Glyn. and Jam. 346. The value to be claimed by an annuity creditor is the original price, with a proportionate deduction in respect of the time since elapsed; and the state of the money market, is not to affect the rule. Exparte *Webb*, 2 Gl. and Jam. 29. *Ed.*]

ought not to be compelled to take in advance. Exparte *Whitaker*, 1 Rose, 301. 1 Montagu's Bankrupt Laws, 212, 225, 2d. ed. 1 Cooke's Bankrupt Laws, 157, 7th ed.

BOND ONLY, WITH SURETY, REPURCHASEABLE.

[The stat. 49 Geo. III. c. 135. has been repealed by the General Bankrupt Act, 6 Geo. IV. c. 16; and the decisions under the former act have suffered considerable alteration. The sections of the new act which relate to this subject, are as follows:—

Repeal of the 49 Geo. 3. c. 135.

"§ 52. And be it enacted, That any person who at the issuing of the commission shall be surety or liable for any debt of the bankrupt, or bail for the bankrupt, either to the sheriff * or to the action, if he shall have paid the debt, or any part thereof, in discharge of the whole debt (although he may have paid the same after the commission issued), if the creditor shall have proved his debt under the commission, shall be entitled to stand in the place of such creditor as to the dividends and all other rights under the said commission, which such creditor possessed, or would be entitled to, in respect of such proof; or if the creditor shall not have proved under the commission, such surety or person liable, or bail, shall be entitled to prove his demand in respect of such payment, as a debt under the commission, not disturbing the former dividends, and may receive dividends with the other creditors, although he may have become surety, liable, or bail, as aforesaid, after an act of bankruptcy committed by such bankrupt; provided that such person had not, when he became such surety, or bail, or so liable as aforesaid, notice of any act of bankruptcy by such bankrupt committed †.

Sec. 52. sureties and persons liable for the debts of bankrupts may prove, after having paid such debts.

"§ 54. And be it enacted, That any annuity creditor of any bankrupt, by whatever assurance the same be secured, and whether there were or not any arrears of such annuity due at the bankruptcy, shall be entitled to prove for the value of such annuity, which value the commissioners shall ascertain, regard being had to the original price given for the said annuity, deducting therefrom such diminution in the value thereof, as shall have been caused by the lapse of time since the grant thereof to the date of the commission.

Sec. 54. Annuity creditor admitted to prove.

Value to be ascertained by commissioners.

"§ 55. And be it enacted, That it shall not be lawful for any person entitled to any annuity granted by any bankrupt, to sue any person

Sec. 55. The annuitant, until he has prov-

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* [See *Linging* v. *Comyn*, 2 Taunt. 246.

† This section is here given to give a complete view of the subject, but it has been held under the 49 G. III, c. 121, s. 8., *ante*, 491, which, as respects this point, is precisely the same as the above,) that an annuity is not *a debt* within the meaning of the section. *Flanagan* v. *Watkins*, 3 B. & A. 185. *Ed.*]

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who may be collateral surety for the payment of such annuity, until such annuitant shall have proved under the commission against such bankrupt for the value of such annuity, and for the arrears thereof; and if such surety, after such proof, pay the amount proved as aforesaid, he shall be thereby discharged from all claims in respect of such annuity; and if such surety shall not (before any payment of the said annuity subsequent to the bankruptcy shall have become due) pay the sum so proved as aforesaid, he may be sued for the accruing payments of such annuity, until such annuitant shall have been paid or satisfied the amount so proved, with interest thereon, at the rate of four per cent. per annum, from the time of notice of such proof, and of the amount thereof, being given to such surety *; and after such payment and satisfaction, such surety shall stand in the place of such annuitant in respect of such proof as aforesaid, to the amount so paid or satisfied as aforesaid, by such surety; and the certificate of the bankrupt shall be a discharge to him from all claims of such annuitant, or of such surety, in respect of such annuity, provided that such surety shall be entitled to credit in account with such annuitant, for any dividends received by such annuitant under the commission, before such surety shall have fully paid or satisfied the amount so proved as aforesaid †."]

Not to be sued under the commission, shall not sue the surety.

After proof, if the surety pay the amount proved, he is to be discharged.

If he does not pay he may be sued for the accruing payments.

Surety shall stand in the place of annuitant.

The certificate shall be a discharge of all claims, either of the annuitant or surety.

Creditor for annuity may receive dividends from estate of *Insolvent Debtor*, in same manner as if insolvent had been bankrupt.

The law on this point in relation to bankrupts and *Insolvent Debtors* is assimilated; for by the act 1 Geo. IV. c. 119, entitled "*An act for the relief of insolvent debtors in* England; *to continue in force until the first day of* June, *one thousand eight hundred and twenty-five*," it is by the 10th section enacted, "That all and every creditor and creditors of any such prisoner, for any sum and sums of money payable by

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* [This part of the section obviates a doubt raised in *Watkins* v. *Flanagan*, where it was held, amongst other points, that arrears accruing *after* the commission, and paid by the surety, might be recovered of the bankrupt. See the references to the case, *ante*, 477. But see *Freeman* v. *Burgess*, 1 Moore & Payne, 91, where it was said *obiter*, that, since the 6 Geo. IV, c. 16, the arrears of an annuity, due after the issuing of a commission, if paid by the surety, may be recovered of the bankrupt; but this *dictum* cannot, it is conceived, be supported against the express words of the act.

It has just been decided, that the New Act is retrospective in its operation. *Bell* v. *Bilton*, 4 Bing. 615.

† There are three misprints in this section in the act. The above has been corrected according to the obvious meaning. See Eden's B. L. 162. 2d ed. *Ed.*]

BOND ONLY, WITH SURETY, REPURCHASABLE.

KNOW ALL MEN *by these presents*, that *We* [*obligor*] of, &c. and [*surety*] of, &c. are held and firmly bound to [*obligee*] of, &c. in the sum of pounds of lawful money of Great Britain [and Ireland], to be paid to the said [*obligee*], or to his certain at-

Obligation from two to one.

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way of annuity or otherwise, at any future time or times, by virtue of any bond, covenant, or other securities of any nature whatsoever, may be and shall be entitled to be admitted a creditor or creditors, and shall be entitled to receive a dividend or dividends of the estate of such prisoner, in such manner and upon such terms and conditions as such creditor or creditors would have been entitled unto by the laws now in force, if such prisoner had become a bankrupt; the amount upon which such dividend shall be calculated, and the terms and conditions on which the same shall be received, being first settled by the said court [" *The Court for the Relief of Insolvent Debtors* "]; and without prejudice in future to their respective securities, otherwise than as the same would have been affected by a proof made in respect thereof by a creditor under a commission of bankrupt, and a certificate obtained by the bankrupt under such commission."

51 G. 3. c. 125, discharged insolvent grantor from payment of annuity to grantee;

There was a similar provision to the above in the insolvent debtors' act, 51 Geo. III. c. 125. s. 16, and it was held, that the grantor of an annuity, liberated by virtue of that act, is discharged both as to his person and property from all future payments of the annuity; but that the act was no discharge of his sureties, or of specific securities. *Cowley* v. *Bussell*, 4 Taunt. 460. And the person of the insolvent is discharged, under that act, from the arrears of an annuity secured by *covenant*, accrued after his discharge; because the 49 Geo. III. c. 121. s. 17. discharges a bankrupt therefrom. *Mence* v. *Graves*, 4 Taunt. 854. But it was held, that a person discharged under 51 Geo. III. c. 125, is liable to his *surety* for the arrears of an annuity due since his discharge, which the surety has been obliged to pay. *Page* v. *Bussell*, 2 Maule and Selw. 551. Mr. Justice Le Blanc observed, the 51 Geo. III. says, that the creditor shall be entitled to be admitted a creditor; but it does not say, that the debtor shall be discharged, in the same manner as if he had been a bankrupt. Mr. Justice Bayley said, even in the case of a bankrupt, if the annuity creditor does not come in and prove, but, disregarding the bankruptcy, sues the surety, the surety cannot insist on the certificate; and if he cannot, may not the surety afterwards resort to the bankrupt? The present is a debt accrued since the debtor's discharge, and therefore the plaintiff is

but it has been held not to discharge him from payment to surety.

BOND ONLY, WITH SURETY, REPURCHASABLE.

torney, executors, administrators, or assigns: For which payment to be well and faithfully made, We bind ourselves and each of us, our and each of our heirs, executors, and administrators, and every of them, jointly and severally, firmly by these presents, *Sealed*

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entitled to judgment. This opinion of Mr. Justice Bayley seems to be contrary to the 49 Geo. III. c. 121. s. 8. and 17, *ante*, 472, and to his own determination with the rest of the court, in *Wood* v. *Dodgson*, 2 Maule & Selw. 195, *ante*, 474. The words of the act 51 Geo. III. c. 125. s. 16, to which Mr. Justice Le Blanc alluded, are the same as those copied *ante*, 479, from the act 1 Geo. IV. c. 119. s. 10; and it is conceived that these words were sufficient to discharge the insolvent, by virtue of the 49 Geo. III. c. 121. s. 8; which section appears in *Page* v. *Bussell*, to have been wholly forgotten both by the court and counsel. [The doubt, as to a bankrupt, is obviated by the 55th sec., 478 *a*. It has lately been determined, in *Freeman* v. *Burgess*, *supra*, 478 *b*, that an insolvent grantor may be arrested by surety, for arrears of annuity become due and paid after grantor's discharge under the act—*sed quære*. *Ed.*]

See further, as to principal and surety for payment of an annuity, *postquam*, 504 (*b*); 509 (*d*).

7 Geo. 4. c. 57. s. 51. Discharge to extend to annuities.

[The corresponding section in the General Insolvent Debtors' Act, 7 Geo. IV. c. 57, is the 51st section, which is as follows:—

"And be it enacted, That the discharge of any prisoner, so adjudicated as aforesaid, shall and may extend to any sum and sums of money which shall be payable, by way of annuity or otherwise, at any future time or times, by virtue of any bond, covenant, or other securities, of any nature whatsoever; and that every person and persons who would be a creditor or creditors of such prisoner for such sum or sums of money, if the same were presently due, shall be admissible as a creditor or creditors of such prisoner for the value of such sum or sums of money so payable as aforesaid, which value the said court shall, upon application at any time made in that behalf, ascertain, regard being had to the original price given for such sum or sums of money, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the time of filing such prisoner's petition; and such creditor or creditors shall be entitled, in respect of such value, to the benefit of all the provisions made for creditors by this act, without prejudice nevertheless to the respective securities of such creditor or creditors, excepting as respects such prisoner's discharge under this act." *Ed.*]

And that annuitants may prove.

with our seals: DATED the day of [in the year of the reign of our sovereign lord *George* the *Fourth*, by the grace of God, of the united kingdom of Great Britain and Ireland king, defender of the faith, and] in the year of our Lord, One thousand eight hundred and .

BOND ONLY, WITH SURETY, REPURCHASABLE.

WHEREAS the above named [*obligee*] hath contracted and agreed with the above bounden [*obligor*], for the purchase of one annuity or yearly sum of pounds of lawful money of Great Britain [and Ireland], to be paid to the said [*obligee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during the natural life of the said [*obligor*], at or for the price or sum of pounds; *And* which said sum of pounds the said [*obligee*] hath on the day of the date of the above written bond or obligation paid to the said [*obligor*], which he the said [*obligor*] doth hereby admit and acknowledge. AND WHEREAS the above bounden [*surety*] hath agreed to join with the said [*obligor*] in the above written bond or obligation, subject to the condition hereunder written, as the surety of the said [*obligor*], for the due and punctual payment of the said annuity:

Recital of contract for purchase.

Payment of consideration money.

and surety's agreement to join.

NOW THEREFORE THE CONDITION of the above written bond or obligation is such, That if the said [*obligor*] and [*surety*], or either of them, their, or either of their heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*obligee*], his executors, administrators, or assigns, for and during the natural life of him the said [*obligor*], *One* annuity or yearly sum of pounds of lawful money of Great Britain [and Ireland], free from taxes and clear of all other deductions whatsoever, on four days or times in the year, that is to say; on the day of , the day of , the day of , and the day of , in every year, by even and equal portions; the first payment thereof to begin and be made on the day of next ensuing the date of the above written bond or obligation: AND ALSO if the heirs, executors, or administrators of the said [*obligor*], or the said [*surety*], his heirs, executors, or administrators, or any or either of them, should well

Condition. Payment of annuity.

And proportional part.

BOND ONLY, WITH SURETY, REPURCHASABLE.

and truly pay or cause to be paid unto the said [*obligee*], his executors, administrators, or assigns, in case the said [*obligor*] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of pounds shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum of pounds shall become due, then a proportional part of the quarterly payment of the said annuity or yearly sum of pounds, to be computed from the day of the date of the above written bond or obligation to the day of the death of the said [*obligor*]; *But* in case any quarterly payment of such annuity or yearly sum of pounds should have become due at the time of the decease of the said [*obligor*], then from such of the said quarterly days of payment of the said annuity or yearly sum of pounds as shall happen to be next and immediately preceding the day of the death of the said [*obligor*], to the day of his decease; *Then* the above written bond or obligation shall be void and of no effect; *Otherwise* shall be and remain in full force and virtue.

REPURCHASABLE.

If the annuity be repurchasable, add,

Recital of agreement for repurchase.

AND [WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of pounds, secured by the above written bond or obligation, it was mutually agreed by and between the said [*obligor*], [*surety*], and [*obligee*], that the said [*obligor*], or the said [*surety*], his heirs, executors, or administrators, or any or either of them, should at any time hereafter be at liberty to repurchase and buy up the said annuity or yearly sum of pounds, upon such terms and conditions as are hereinafter particularly mentioned and expressed.

Declaration of agreement for repurchase, on seven days' notice, and paying original purchase money, and one quarter's annuity.

Now *it is hereby Declared,* that] in case the said [*obligor*], or the said [*surety*], his heirs, executors, or administrators, or any or either of them, should at any time hereafter be minded and desirous of repurchasing or buying up the said annuity or yearly sum of pounds; and of such his, their, or either of their intention should give

BOND ONLY, WITH SURETY, REPURCHASABLE.

unto the said [*obligee*], his executors, administrators, or assigns, notice in writing by the space of (seven) days, and should at the expiration of the time to be mentioned in such notice, well and truly pay or cause to be paid unto the said [*obligee*], his executors, administrators, or assigns, the sum of pounds of lawful money of Great Britain [and Ireland], being the original purchase money for the said annuity, and one (quarter) of a year's annuity in advance; together with all and every such sum and sums of money as shall be then due for the arrears of the said annuity; and together also with a proportional part of the same annuity from the last day of payment thereof preceding such repurchase, up to and including the day of repurchasing the same, as and in full for the repurchase of the said annuity or yearly sum of pounds above secured; *Then*, and in such case, if such repurchase should be made by the said [*obligor*], the said annuity or yearly sum of pounds shall cease and determine, and be no longer paid or payable; and the above written bond or obligation shall be void and of no effect: *But* if such repurchase should be made by the said [*surety*], his heirs, executors, or administrators, the said annuity or yearly sum shall continue for his or their benefit, and the said bond or obligation shall be assigned to him or them, or to such person or persons as he or they shall direct or appoint, *subject* to the like right of the said obligor to repurchase the same.

SEALED AND DELIVERED by the above named [*obligor*], [*surety*], and [*obligee* (*a*)], in the presence of

(*a*) *Vide ante*, 740 (*d*). The surety should have an *examined* copy of this bond, as well as the principal. Examined copy of bond.

BOND ALONE, TO TWO AS TENANTS IN COMMON; REPURCHASABLE.

BOND *for Securing an* ANNUITY *for the* OBLIGOR'S LIFE, *to* TWO *Obligees, as* TENANTS IN COMMON; *without any other Security; and either where the Annuity is, or where it is not,* REPURCHASABLE.

Obligation from one to two.

KNOW ALL MEN *by these presents,* That I [*obligor*] of, &c. am held and firmly bound to [*obligee*] of, &c. and [*other obligee*] of, &c. in the sum of thousand hundred and pounds of lawful money of Great Britain [and Ireland], to be paid to the said [*obligee*] and [*other obligee*], as tenants in common, or their or either of their certain attornies, executors, administrators, or assigns; *For* which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents, *Sealed* with my seal: DATED the day of , in the year of the reign of our sovereign lord *George* the *Fourth*, by the grace of God, of the united kingdom of Great Britain and Ireland king, defender of the faith; *And* in the year of our Lord, one thousand eight hundred and

Recital of agreement for purchase of annuity by two obligees as tenants in common.

WHEREAS the above named [*obligees*] have contracted and agreed with the above bounden [*obligor*], for the absolute purchase of one annuity, or yearly sum of pounds of lawful money of Great Britain [and Ireland], to be paid to the said [*obligees*] respectively, as tenants in common, their respective executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever,

for and during the natural life of him the said [*obligor*], at or for the price or sum of hundred and pounds: [(*a*) AND upon the treaty for the purchase of the said annuity or yearly sum of pounds, it was agreed that all costs, charges, and expenses attending the said contract, and for preparing and perfecting the securities for the same, and for preparing and inrolling a memorial thereof, should be borne and paid by the said [*obligor*].] AND WHEREAS the said [*obligees*] have, on the day of the date of the above written bond or obligation, [(*b*) in their own proper persons,] paid to the said [*ob-*

BOND ALONE, TO TWO AS TENANTS IN COMMON; REPURCHASABLE.

Agreement as to expenses.

Recital of paying consideration money.

(*a*) *Vide ante*, 460 (*b*).

(*b*) Under the new annuity act, it is perfectly clear that this is an unnecessary statement, and need not be made either in any of the securities or in the memorial. *Ante*, 335. [354. 357].

Payment of consideration by agent need not be stated.

By the old annuity act, 17 Geo. III. c. 26. s. 3. it was enacted, "That in every deed, instrument, or other assurance, whereby any annuity or rent charge shall from and after the passing of this act, be *granted* or attempted to be granted, the consideration really and *bonâ fide* (which shall be in money only) and also the name or names of the person or persons *by whom*, and on whose behalf, the said consideration or any part thereof shall be *advanced*, shall be fully and truly set forth and described in words at length; and in case the same shall not be fully and truly set forth and described, every such deed, instrument, or other assurance, shall be null and void to all intents and purposes."

Under 17 Geo. 3. c. 26. s. 3. *deeds* should mention the consideration, and by whom, and on whose behalf *advanced*.

Under this clause Lord Loughborough held, that the name of an agent by whom the money was paid, ought to have been set forth in the *memorial*; and that for want of it the deed was void: and his lordship added, it should have stated, that it was paid by Jenkins, and on behalf of Cresswell. If this can stand, it would be necessary immediately to repeal the act: for the consequence will be, that the *memorial*, which, it is obvious, should serve as a check on these transactions, would be a cover to them, and would be deemed to give additional validity, instead of checking them, and bringing all the circumstances to light. Duke of *Bolton* v. *Williams*, 2 Ves. jun. 153. 4 Bro. C. C. 309. Hunt, 95. It may appear unnecessary to remind the reader, that the act requires no such statement in the memorial. In the case, ex parte *Ansell*, 1 Bos. & Pull. 63. n. (*a*), Chief Justice Eyre said, the *deed* must express by

If paid by an agent, Lord Loughborough held, that it should have been stated in the *memorial*, under the old act;

but that decision cannot be supported.

BOND ALONE, TO TWO AS TENANTS IN COMMON; REPURCHASABLE.

whom the consideration was paid, but not the *memorial*. And in *Dalmer* v. *Barnard*, 7 Term Rep. 253, Mr. Justice Lawrence observed, it has been supposed that the decision in the Duke of *Bolton* v. *Williams* proceeded on a confusion of the first and third sections of the act.

If payment were made by agent it should have been stated in *deed*;

In *Dalmer* v. *Barnard*, 7 Term Rep. 248, it was held, that if the consideration money be paid by an agent on behalf of the principal, it must be so stated in the *deed*, and that it is not sufficient to state that it was paid by the principal. And Lord Kenyon observed, the legislature having required that "the name or names of the person or persons, by whom *and on whose behalf* the consideration was advanced, should be truly set forth," I think that the names of both the persons should be inserted when the person actually paying the money pays it on account of some other person. When this motion was first made, I alluded to the maxim *qui facit per alium facit per se*, without attending to the particular words of this act of parliament: but those words are so explicit, as to leave no room for doubt. I wish there was an uniformity of decision in all the courts of justice upon this act. And his lordship added, this very case was decided in the case cited of the Duke of *Bolton* v. *Williams*, where the Lord Chancellor said, that the statute required, and that it was essential to the justice of the case, that the name of the agent as well as the principal should be set forth, that the whole *res gestæ* might appear, for the sake of a direction to every quarter from whence information may be collected. *Et lex plus laudatur quando ratione probatur.* So in *Glasse* v. *Mount*, 7 Term Rep. 390. the defendant granted an annuity of 450*l.* to the plaintiff, in consideration of 3400*l.*, which, though advanced by the plaintiff, was in fact paid by *Bunce* as his agent, and so it was stated in the *memorial*. And a rule having been obtained calling on the plaintiff to shew cause why a warrant of attorney to confess judgment should not be delivered up to be cancelled, because a deed of the same date with the warrant of attorney, and given with it to secure this annuity, stated that the consideration money was paid by the *plaintiff* (instead of *Bunce*) to the defendant; Erskine, in shewing cause against the rule, attempted to distinguish this case from those of the Duke of *Bolton* v. *Williams*, and *Dalmer* v. *Barnard*, by observing, that in those cases it was not stated truly *in the memorial*, by whose hands the consideration money was paid: whereas in this case, it does appear on the memorial, that the consideration was paid by *Bunce* for the plaintiff; that the omission of such a circumstance in the deed was of less importance than it would be in the memorial, because the object of the legislature in passing the annuity act, was to disclose the whole transaction; and that the public had an opportunity of

and it was not sufficient to state it in the *memorial* only.

consulting the memorial and thereby knowing the real transaction, but they had no means of knowing the contents of a private deed. Lord Kenyon, Chief Justice, stopping Gibbs and Bayley in support of the rule, said, the words of the third section of the annuity act require in positive terms that it shall be stated *in the deed*, "by whom and on whose behalf the consideration money was paid." Therefore this objection must prevail. Nor can this case be distinguished on principle from the two cases that have been referred to.

BOND ALONE, TO TWO AS TENANTS IN COMMON; REPURCHASABLE.

Where a bond, to secure an annuity set forth in the memorial, recited, that the consideration money, 1400*l.* was paid on the twenty-fourth of December, when all the deeds, except one, were executed and bore date; and the memorial also contained a specific allegation that the consideration money was paid, but without stating any particular time; but, in fact, that one deed not having been executed by one of the grantors, the grantee delivered over the consideration money on that day to another of the grantors, to be by him lodged in a banker's hands, in the names of himself and the grantee's attorney, till that deed was executed; and such deed was not in fact executed, nor the money actually available to the grantors, till the twenty-sixth of the same month: it was held, that this was a substantial compliance with the annuity act, 17 Geo. III. c. 26, the time of payment of the consideration money not being specifically required to be stated by that act, nor being any otherwise material than as entering into the question of the value of consideration. And held, that upon an issue taken (in an action of debt on bond) in general terms, without reference to the annuity act, upon a traverse that the consideration money was not paid *by the grantee* to the use of the grantors; evidence that it was so paid on the twenty-sixth *by the grantee's agent*, will sustain the affirmative of the issue so generally framed. *Coare* v. *Giblett*, 4 East, 85. But this decision was upon the general principle of law, that payment by the agent is payment by the principal, *qui facit per alium, facit per se*, and not upon the annuity act. 9 Ves. 221. For, supposing such a statement necessary by the annuity act, the objection was not well raised on the record, by alleging that the grantee *did not pay*; for in point of law, upon the facts stated, he *did pay*: but it should have been alleged that the securities were defective in not stating the mode in which such payment was in fact made by the grantee, viz. in not stating that the grantee paid it *by the hands* of the agent. And the ground of this objection should have been laid, by specially alleging by plea the facts which should have supported it, which was not done in that case; and as it was not, it could not be given in evidence under the terms of the issue, framed in the general terms in which that issue was.

Qui facit per alium, facit per se.

BOND ALONE, TO TWO AS TENANTS IN COMMON; REPURCHASABLE.

In *Phillipps* v. *Crawfurd*, 9 Ves. 220, Sir William Grant, Master of the Rolls, said, upon the question whether it is absolutely necessary to state, not only with whose money the payment is made, but also the hand by which it is made, is a question, upon which, notwithstanding the decisions that have been made, considerable doubt is still entertained. That is one of the points referred to the Judges in the case of *Ayscough* v. *Mackreth*, now depending in the House of Lords. I understand it is not certain, whether that case will receive a decision upon that point, as it may be disposed of upon other grounds. The facts of this case do not call for a direct decision of that question. If it is necessary to make such a statement, it is required to be made in the *deeds*, not in the memorial. The first section of the act, *ante*, 357, prescribing what is to be done as to the memorial, says nothing of the name of the person paying. The third section, *ante*, 485, relating to the deeds, requires the name of the person by whom the consideration is advanced, to be set forth. It might perhaps be doubted, whether he, by whose hands the money is delivered, can be called the person by whom it is advanced. But if the precise fact is meant to be stated, the statute ought rather to require it to be done in the memorial; for, who pays the money cannot be known till the execution of the deeds. The person intended to be present with the money may be prevented.

His Honour added, but proceeding upon the supposition that the statute requires the precise fact to appear by the deed, that is substantially complied with here; for in the receipt indorsed upon the deed, the payment is stated to be made by Harvey, as agent for Crawfurd. The real transaction then is stated at the first moment it was ascertained. It appears, where most naturally it ought to appear, in the receipt; the only thing belonging to the deed, posterior to the payment. Whenever the deed is produced, the fact must be known; and it is only by the production of the deed that the statute requires it should be known. The purpose of the statute is as effectually answered by the insertion of the name in the receipt, as upon the deed; therefore, without questioning any of the decisions, the present case is not warranted by the fact.

Final decision under the old act, that the agent's name who *pays* should be stated in the deed.

In the case above alluded to by his Honor the Master of the Rolls, in answer to the question submitted by the House of Lords, Whether, it appearing upon the record that the sum of 14,000*l.* the proper money of the said Duke, was paid in notes of the Governor and Company of the Bank of England, by Edward Lenn, then a clerk of Messrs. Coutts and Co. the then bankers of the said Duke, and by the said Duke's direction, and that the said Duke was not then present; and the said indenture having stated the consideration to be "the sum of 14,000*l.*

ligor] [(*c*) by the hands of [*agent*], of, &c.] the said sum of lawful money of Great Britain, well and truly paid by the said Duke," the several matters required by the before mentioned act of parliament to be fully and truly set forth and described in words at length in every *deed*, whereby an annuity shall be granted, as to the consideration and the payment of the consideration for such annuity, are set forth and described in the said indenture according to law? *The opinion of the judges* was delivered by the Lord Chief Baron Macdonald, That the name of the person, by whose hand the consideration of the annuity was paid, ought to have been stated in the deed, by which the annuity was granted. *Askew* v. *Mackreth*, 1 Bos. & Pull. N. R. 231.

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Thus the point was at last settled. But it may be stated, without fear of contradiction, that it would not have been so settled, if it had not been for the opinion of Lord Loughborough in the Duke of *Bolton* v. *Williams*; and which opinion, we have seen, could not be supported. *Vide ante*, 485. Perhaps, divested of "certain net-works of the law," as Lord Ellenborough, 4 East, 93, justly termed these decisions on the annuity act, the words in the third section, "the name or names of the person or persons by whom and on whose behalf the consideration, or any part thereof, shall be *advanced*," *ante*, 485, had evident relation to the words of the first section, and could have received no other construction than, in the words of the first section, "the name of all the parties to the deed, and for whom any of them are trustees." *Ante*, 357.

(*c*) In *Crawfurd* v. *Phillips*, 2 Bos. and Pull. N. R. 141, it was held, that if the consideration of an annuity be paid *to* the agent of the *grantor*, the name of such agent need not be inserted in the annuity deed: and that if the consideration for an annuity be alleged in the deed to have been paid by the grantee to the grantor on the day of the date of the deed, on which day it was paid to the common agent of both parties, who were at a distance from each other, and by him paid over in a few days afterwards to the grantor on his executing the deed, this was held a sufficient allegation of payment within the statute; for a payment to the agent of the principal, is a payment in law to such principal. Sir James Mansfield, Chief Justice, observed, there is nothing in the act which prevents payment *to* the agent of the *receiver* from being considered as a payment to him. It is provided, that the name of the person who pays the money shall be stated in the deed; and the *interpretation* has been, that where the money has been *paid*

Under the old annuity act, a payment *to* an agent is payment to the principal.

BOND ALONE, TO TWO AS TENANTS IN COMMON; REPURCHASABLE.

of hundred and pounds; which he the said [*obligor*] doth hereby admit and acknowledge.

Now therefore THE CONDITION of the above written bond or obligation is such, that if the said [*obligor*] should well and truly pay or cause to be paid, unto the said [*obligees*] respectively, in equal shares and proportions, as tenants in common, their respective executors, administrators, or assigns, for and during the natural life of him the said [*obligor*], *One* annuity or yearly sum of pounds of lawful money of Great Britain [and Ireland], free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say; on the day of , the day of , the day of , and the day of , in every year, by even and equal portions; the first payment thereof to begin and be made on the day of , next ensuing the day of the date of the above written bond or obligation: AND ALSO, if the heirs, executors, or administrators of the said [*obligor*] should well and truly pay, or cause to be paid, unto the said [*obligees*] respectively, in equal shares and proportions, as tenants in common, their respective executors, administrators, or assigns, in case the said [*obligor*] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of pounds shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of

Condition, payment of annuity,

and proportionate part.

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by an agent, it cannot be stated as a payment by the principal; but there is nothing which makes it necessary to state the agent who receives the money. In all transactions whatsoever, payment to the agent is payment to the principal. I think, therefore, that the case of *Coare* v. *Giblett* was rightly decided, as well as this case, when before the Master of the Rolls; and there is no ground for this Court to overturn those decisions: and in this opinion the other judges concurred.

But these decisions do not apply to the new act.

As the decisions on the old act are still in force as to annuities granted under that act, many of which annuities are still subsisting, it appeared necessary to be particular on the above points, although it can be of no service as to annuities to be granted in *future*, under the new act.

BOND ALONE, TO TWO AS TENANTS IN COMMON; REPURCHASABLE.

the said annuity or yearly sum of pounds shall have become due, then a proportional part of the quarterly payment of the said annuity, or yearly sum of pounds, to be computed from the day of the date of the above written bond or obligation, to the day of the death of the said [*obligor*]; *But* in case any quarterly payment of such annuity or yearly sum of pounds, should have become due at the time of the decease of the said [*obligor*], then from such of the said quarterly days of payment of the said annuity of pounds, as shall happen to be next and immediately preceding the day of the death of the said [*obligor*], to the day of his decease, *Then* the above written bond or obligation shall be void and of no effect.

If the annuity be repurchasable, add,

REPURCHASABLE.

Recital of agreement for repurchasing an annuity granted to two as tenants in common, on paying half a year's annuity.

And [whereas, upon the treaty for the purchase of the said annuity or clear yearly sum of pounds herein before mentioned, it was mutually agreed by and between the said [*obligees*] and [*obligor*], that the said [*obligor*] should at any time hereafter be at liberty to repurchase and buy up the said annuity, or clear yearly sum of pounds, upon giving unto the said [*obligees*], or unto their executors, administrators, or assigns, seven days' notice in writing of such his intention, and paying unto the said [*obligees*], their executors, administrators, or assigns, in equal shares and proportions, at the expiration of the time to be mentioned therein, the full sum of hundred pounds of lawful money of Great Britain [and Ireland], as and for the consideration of such repurchase, being the original purchase money, and two quarterly payments of the said annuity; together with all arrears that should be due on the said annuity, and a proportional part thereof from the last day of payment preceding such repurchase, up to and until repurchasing the same.

Declaration as to repurchase.

Now] *it is hereby Declared*, that in case the said [*obligor*] should at any time hereafter be minded and desirous of repurchasing the said annuity, or yearly sum of pounds, and of such his intention should give unto the

BOND ALONE, TO TWO AS TENANTS IN COMMON; REPURCHASABLE.

said [*obligees*], their executors, administrators, or assigns, notice in writing by the space of seven days, that they the said [*obligees*], their executors, administrators, or assigns, shall and will at the end of the said seven days, from the time such notice shall be given as aforesaid, on receiving in equal shares and proportions, all and every sum or sums of money that shall be due for the arrears of the said annuity, together with a proportional part thereof from the last day of payment preceding such repurchase, up to and until repurchasing the same as aforesaid, accept, receive, and take the said sum of hundred pounds, to be paid to them in equal shares and proportions, as and in full for the repurchase of the said annuity, or yearly sum of pounds: AND on receipt of the said sum of hundred pounds, and all arrears of the said annuity, or clear yearly sum of pounds, and such proportional part thereof in manner aforesaid, shall and will deliver the above written bond or obligation to the said [*obligor*], to be cancelled; *And then*, and in such case, the said annuity or yearly sum of pounds, shall cease, determine, and be no longer payable (*d*).

Examined copy of bond.

(*d*) *Vide ante*, 470 (*d*), as to examined copy.

BOND *for securing an* ANNUITY, *in Consideration of relinquishing a Business.*

BOND FOR ANNUITY FOR RELINQUISHING TRADE.

KNOW ALL MEN *by these Presents*, That I [*obligor*], of, &c. (*Common Form of Obligation, from one to one*, ut post, 499.)

Obligation.

WHEREAS the above named [*obligee*], hath for many years heretofore carried on the trade or business of a (surgeon and apothecary), and hath established a considerable practice and connection in the said trade or business, within the liberties of London and Westminster. AND WHEREAS the said [*obligee*] hath agreed to resign to or in favour of the said [*obligor*] the said business, so established by him as aforesaid, in consideration of an annuity (*a*) or yearly sum of hundred

Recital of establishing trade.

Recital of agreement to resign, in consideration of annuity.

(*a*) Under the 17 Geo. III. c. 26, it was necessary only to register those annuities, which were granted in consideration of *something paid*, 4 T. R. 792; therefore where an annuity was granted in consideration of the grantee resigning his situation as master of an academy, in favour of the grantor, it was decided that a memorial of the grant need not be registered; even though at the time of the grant, the grantee agreed to assign to the grantor his household furniture at an appraised value, and to lend a sum of money to the grantor, to be repaid with interest. *Hutton* v. *Lewis*, 5 Term Rep. 639; Hunt, 343. 2d ed. S. C. *Crespigny* v. *Wittenoom*, 4 Term Rep. 793; *ante*, 359. So it was decided, that no memorial was necessary to be enrolled of a grant of an annuity in consideration of the grantee resigning her trade and leasehold premises to the grantor; though part of the consideration was book debts and

Annuity granted in consideration of resigning business, &c. need not be enrolled under old act, [nor under new act.]

BOND FOR ANNUITY FOR RELINQUISHING TRADE.

pounds, to be paid by the said [*obligor*], his heirs, executors, or administrators, to the said [*obligee*] and his assigns, during his life, at the times hereinafter mentioned.

Recital of assignment of business.

AND WHEREAS in pursuance of such agreement, by indenture bearing even date with the above written bond or obligation, and made between the said [*obligee*], of the one part, and the said [*obligor*], of the other part, the said [*obligee*] hath granted and yielded up unto the said [*obligor*], the liberty or privilege of carrying on the trade or business of a (surgeon and apothecary) heretofore carried on in (the liberties of London and Westminster) by the said [*obligee*], in the room and as the successor of the said [*obligee*], and all the benefit, profit, emolument, and advantage to arise therefrom;

Covenant to recommend obligor,

AND hath, by such indenture, entered into covenants with the said [*obligor*], for recommending and introducing the patients of the said [*obligee*] to the said [*obligor*],

and not to practise within certain limits.

and for preventing the said [*obligee*] from exercising the said trade or business of (an apothecary and surgeon) within (*b*) (the liberties of London and Westminster) or within (ten) miles from the same: as by reference to the said indenture will appear.

Condition for payment of annuity.

NOW THE CONDITION of the above written bond or obligation is such, that if the above bounden [*obligor*], his

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stock in trade. *Doe* dem *Johnstone* v. *Phillips*, 1 Taunt. 356. But a memorial in these cases, is requisite under the present annuity act. *Ante*, 335. 336. [It has since been determined, in the case of *James* v. *James*, 2 Brod. and Bing. 702. that no annuity granted for any other than a *pecuniary* consideration need be memorialized under the present act, 53 Geo. III. c. 141. See the case fully stated, Vol. II. 325, and the cases there cited.

Where the consideration upon the face of a bond, for securing the payment of an annuity, was stated to be love and natural affection to the grantee's mother, and it appeared that she had sold her trade, and applied the money to place out her sons in business; this was not considered a pecuniary consideration, and it was held not necessary to be enrolled under the 17 Geo. III. c. 36. *Hick* v. *Keats*, 4 B. and A. 69. This case also applies to the new act. *Ed.*]

(*b*) *Vide ante*, 172 (*d*).

BOND FOR ANNUITY FOR RELINQUISHING TRADE.

heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*obligee*], or his assigns, during the term of his natural life, *One* annuity or yearly sum of hundred pounds of lawful money of Great Britain [and Ireland], free from taxes, and without any deduction whatsoever, by half yearly payments, at and on the days or times following, that is to say; the day of , and the day of , in each and every year, by even and equal portions; the first half yearly payment thereof to begin and be made on the day of next ensuing the date of the above written bond or obligation: AND ALSO if the said [*obligor*], his heirs, executors, or administrators, should within twenty days next after the decease of the said [*obligee*], well and truly pay or cause to be paid unto the executors, administrators, or assigns of the said [*obligee*], a proportional part of the said annuity, for the time which at his decease shall have elapsed of the half yearly payment thereof then growing due, *Then* the above written bond or obligation shall be void and of no effect.

And proportional part.

BOND FOR ANNUITY, IN CONSIDERATION OF AN ESTATE.

BOND *for securing an* ANNUITY *for the* OBLIGEE'S LIFE, *in Consideration of a Conveyance and Surrender of Freehold and Copyhold Premises.*

Obligation from one to one.

KNOW ALL MEN *by these presents*, That I [*obligor*] of, &c. am held and firmly bound to [*obligee*] of, &c. in the sum of thousand pounds of lawful money of the united kingdom of Great Britain and Ireland current in Great Britain, to be paid to the said [*obligee*], or to his certain attorney, executors, administrators, or assigns; *For* which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents, *Sealed* with my seal: DATED this day of , in the year of the reign of our sovereign lord *George* the *Fourth*, by the grace of God of the united kingdom of Great Britain and Ireland king, defender of the faith; *And* in the year One thousand eight hundred and

Recital of contract for purchasing annuity in consideration of conveyance and surrender of freehold and copyhold premises.

WHEREAS the above bounden [*obligor*] hath contracted and agreed with the above-named [*obligee*], to grant to him and his assigns, a clear annuity or yearly sum of hundred pounds, for his natural life; AND the true and *bonâ fide* consideration for the purchase of the said annuity, is a conveyance and surrender, made or to be made by the said [*obligee*] to the said [*obligor*], his heirs

and assigns, of certain freehold and copyhold messuages, lands, and hereditaments, of him the said [*obligee*], situate in the parish of , or elsewhere, in the county of (*a*).

BOND FOR ANNUITY IN CONSIDERATION OF AN ESTATE.

NOW THE CONDITION of the above written bond or obligation is such, that if the said [*obligor*], his heirs, executors, or administrators, should, from time to time, during the natural life of the said [*obligee*], well and truly pay or cause to be paid unto the said [*obligee*], or his assigns, *One* annuity or clear yearly sum of hundred pounds of lawful money of the united kingdom of Great Britain [and Ireland] current in Great Britain, to commence, or be considered as commencing, from the day of next preceding the date of the above written bond, by even and equal payments, to be made half yearly, on the day of , and the day of in every year, clear of all deductions on any account whatsoever: and should make the first payment of the said annuity on the day of next ensuing the date of the said bond or obligation, *provided* the said [*obligee*] should be then living; *And* in the event of the death of the said [*obligee*], between or in the interval of any of the said half yearly days of payment, and either before or after the said day of next, then if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said executors, administrators, or assigns of the said [*obligee*], [as part of his personal estate] such part of the said annuity of hundred pounds as shall be in proportion to the time or number of days which, inclusive of the day of the decease of the said [*obligee*], shall have elapsed prior to his decease, and after the day of payment next and immediately preceding that event, or as the case shall require, next after the day of last, if the said [*obligee*] should die prior to the day of

Condition for paying annuity for obligee's life.

With proportional part to his decease.

(*a*) A memorial of the securities in a similar case to the above, must be enrolled. *Vide ante*, 335, 336. [This is incorrect. See *ante*, 494, and Vol. II. 325.]

Memorial necessary.

BOND FOR ANNUITY IN CONSIDERATION OF AN ESTATE.

next: And if the said [*obligor*], his heirs, executors, or administrators, should pay such proportional part of the said annuity of hundred pounds as soon after the decease of the said [*obligee*] as demand shall be made thereof by the executors, administrators, or assigns of the said [*obligee*], and clear of all deductions whatsoever, *Then* the above written bond or obligation shall be void and of no effect; or otherwise shall be and remain in full force and effect.

BOND, WITH COLLATERAL SECURITIES, REPURCHASABLE.

BOND *for securing an* ANNUITY; *collaterally secured by a Grant and Demise, and a Warrant of Attorney to confess Judgment; repurchasable at any Time after the Expiration of three Years, on giving three Months' Notice.*

Obligation from one to one.

KNOW ALL MEN *by these Presents*, that I [*grantor*] of, &c. am held and firmly bound to [*grantee*] of, &c. in the sum of [*double the purchase money*] pounds of lawful money of Great Britain [and Ireland], to be paid to the said [*grantee*], or to his certain attorney, executors, administrators, or assigns; *For* which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents, *Sealed* with my seal: DATED this day of , in the year of our Lord one thousand eight hundred and

Recital of contract for purchase of annuity, subject to be repurchased.

WHEREAS the above-bounden [*grantor*], hath contracted and agreed with the above named [*grantee*], to grant to him, his executors, administrators, and assigns, a clear annuity or yearly sum of pounds, for the term of (ninety-nine years) if the said [*grantor*] should so long live, subject nevertheless to be repurchased on the terms expressed in the condition hereunder written: AND the true and *bonâ fide* consideration to be advanced and given for the purchase of the said annuity is the sum of hundred pounds: AND the said [*grantee*] hath, on the day of the date of the above written bond or obligation, paid to the said [*grantor*], the sum of hundred pounds in

Consideration.

Payment.

BOND, WITH COLLATERAL SECURITIES, REPURCHASABLE.

notes of the Governor and Company of the Bank of England payable to bearer on demand, as and for the consideration for the grant of the said annuity: [(*a*) AND on the treaty for the sale and purchase of the said annuity it was agreed, that the costs and charges of preparing and perfecting the several securities for payment of the same annuity; and of preparing and filing the memorial thereof, should be borne and paid by the said [*grantor*].] AND WHEREAS on the contract for the said purchase it was agreed, that for better securing the payment of the said annuity, the said [*grantor*] should execute a certain indenture of grant and demise relating thereto; which said indenture is already prepared and engrossed, and bears or is intended to bear even date with the above written obligation, and is made or expressed to be made between the said [*grantor*] of the first part, the said [*grantee*] of the second part, and [*trustee*] of, &c. of the third part: *And* that the same annuity should be further secured by the above written bond or obligation; *And also* by a warrant of attorney to confess judgment thereon.

Expenses.

Reference to collateral securities.

Condition, payment of annuity;

NOW THE CONDITION of the above written bond or obligation is such, that if the said [*grantor*] should from time to time during the said term of (ninety-nine years) if the said [*grantor*] should so long live, or which shall first happen, until the repurchase of the said annuity, according to the provision hereinafter contained, well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, *One* annuity or clear yearly sum of pounds of lawful money of Great Britain [and Ireland], by equal quarterly payments, to be made on the day of , the day of , the day of , and the day of , in every year, by even and equal portions, and clear of all deductions on any account whatsoever: AND should make the first quarterly payment of the said annuity on the day of next ensuing the date of the said bond or obligation; provided the said [*grantor*] should be then living: AND in the event of the death of the said [*grantor*] between, or in the interval of any two of the said quarterly

and proportional part.

(*a*) *Vide ante*, 460 (*b*).

BOND, WITH COLLATERAL SECURITIES, REPURCHASABLE.

days of payment, and either before or after the said day of next, then if the heirs, executors, or administrators of the said [*grantor*], should also well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, such part of the said annuity of pounds, as shall be in proportion to the time or number of days, which, inclusive of the day of the decease of the said [*grantor*], shall have elapsed prior to his decease, and after the day of payment next and immediately preceding that event: And if the heirs, executors, or administrators of the said [*grantor*] should make the payment of such proportional part of the said annuity of pounds, as soon after the decease of the said [*grantor*] as demand shall be made thereof by the said [*grantee*], his executors, administrators, or assigns, and clear of all deductions whatsoever: And if the said [*grantor*], or his assigns, should at any time after the expiration of (three) years, to be computed from the day of the date of the above written bond or obligation, be desirous of repurchasing the said annuity of pounds; and should give the said [*grantee*], his executors, administrators, or assigns, (three) calendar months notice in writing of such his or their desire; and should upon the expiration of the said notice, or at any time afterwards, upon giving (three) calendar months such notice as aforesaid, well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, the sum of hundred pounds of lawful money of Great Britain [and Ireland]; *and also* all and every sum and sums of money which shall be then due for or on account of the arrears of the said annuity of pounds, and also a proportional part of the same annuity, up to and inclusive of the day of repurchasing the same; *and* all sums of money, if any, which shall be then due for or on account of any costs, charges, or expenses, occasioned by the non-payment of the said annuity; *Then*, and in either of the said cases, the above written bond or obligation, and also the said warrant of attorney, shall be delivered up to be cancelled, or be cancelled and satisfaction acknowledged on the record of the said judgment to be entered up as aforesaid under the authority of the said warrant of attorney.

And payment of repurchase monies.

BOND, WITH COLLATERAL SECURITIES, AND TWO SURETIES, REPURCHASABLE.

BOND *for securing an* ANNUITY *for the* GRANTOR'S LIFE, *collaterally secured by a Deed of Covenants and a Warrant of Attorney to confess Judgment, in which* TWO SURETIES *join;* REPURCHASABLE *by the Grantor or by the Sureties, on giving Six Months Notice, and paying the original Purchase Money, or on giving Seven Days Notice, and paying Half a Year's Annuity in addition to the original Purchase Money.*

Obligation from three to one.

KNOW ALL MEN *by these presents, that* We [*grantor*] of, &c. [*surety*] of, &c. and [*other surety*] of, &c. are held and firmly bound to [*grantee*] of, &c. in the sum of hundred pounds of lawful money of Great Britain [and Ireland], to be paid to the said [*grantee*], or to his certain attorney, executors, administrators, or assigns; *For* which payment to be well and truly made, we bind ourselves and each of us, and any two of us, (*a*), our and each of our and any two of our (*a*) heirs, executors, and administrators, jointly, and severally, and respectively, firmly, by these presents, *Sealed* with our seals. DATED the day of , in the year of the reign of our sovereign lord *George* the *Fourth*, by the grace of God of the united kingdom of Great Britain and Ireland king, defender of the faith; and in the year of our Lord one thousand eight hundred and

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Without special words, obligee cannot sue two

(*a*) Without these words, it seems, an action would not lie against any *two*, in the life of the third; for as it has been justly observed by Mr.

BOND, WITH COLLATERAL SECURITIES, AND TWO SURETIES, REPURCHASABLE.

Justice Buller, that if *three* be bound jointly and severally in a bond, the obligee cannot sue *two* of them only, but he must either sue them all, or each of them separately. And he added, though that doctrine has been several times questioned, yet it has been held good law from the time of Lord Coke: *Streatfield* v. *Halliday*, 3 T. Rep. 782: he might have said, from the time of Henry the Eighth; for in 27 H. VIII. 6 pl. 29, in debt against *two* upon a joint and several bond made by *three*, the court were of opinion, that the writ was not well brought: and Fitzherbert Justice, directed the counsel for the defendant *to make thereof a plea, so that the other party may have his answer*; which was done. By the words "cannot sue two of them only," are to be understood, if the defendants make a proper plea according to the directions of Fitzherbert in the above cited case; which is, *by pleading in abatement* that there is another joint obligor, and not that the defendant can take advantage of that circumstance in evidence upon *non est factum*, any more in the case of an action against two of three obligors on a joint and several bond, than in the case of one of two obligors on a joint bond. It is at the election of the obligee to consider such a bond either a joint or several one. If he sue one or each of the obligors, he acts upon it as a several bond. If he sue all of them, he proceeds upon it as a joint bond. If he sue *two* only of the three, he still proceeds upon it as a joint bond; for he can only sue one or each of them upon a several bond. If the obligee elect to proceed upon it as a *joint* bond, there is no difference between suing *two* only of *three* joint obligors, and *one* only of *two* joint obligors. In either case, advantage can only be taken of the omission by a plea in abatement. 10 H. VII. 16. *per* Keble, to which Brian, C. J. agreed. Bro. *Obligation*, 94. See 12 H. IV. 21. b. pl. 12. Bro. *Dette*, 69. S. C. where this matter was pleaded in abatement, and the writ quashed. This point has been dwelt upon the longer, because a distinction has been sometimes taken between the case, where one only of two or more persons is sued upon a *joint* bond, and *two* only or *three* or more, upon a *joint and several* bond. The case of *Gaulton* v. *Chaliner* and *Wilkinson*, Stafford Lent assizes, 1794, seems to have been ruled upon this distinction. That was an action of debt against the two defendants, upon a joint and several bond given by them, and one Joseph Gibson, to which they pleaded *non est factum*. It was proved on the trial, that Gibson executed the bond; upon which it was objected, that the action was not properly brought—that it was neither upon a joint nor several bond; and the plaintiff was nonsuited, with leave to move to set the nonsuit aside without costs; and in Easter term following it was set aside without argument, upon the ground above mentioned. Wms. n. 1 Saund. 291 *e*.

joint and several obligees in the life of a third joint and several obligee.

BOND, WITH COLLATERAL SECURITIES, AND TWO SURETIES, REPURCHASABLE.

Recital of contract for purchasing annuity for grantor's life. Reference to collateral securities.

WHEREAS the above named [*grantee*] hath contracted and agreed with the above bounden [*grantor*], for the purchase of one annuity or yearly sum of pounds of lawful money of Great Britain [and Ireland], to be paid to the said [*grantee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during the natural life of him the said [*grantor*], at or for the price or sum of hundred pounds. AND WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of pounds, it was agreed by and between the said [*grantee*] and [*grantor*], that for securing the payment thereof, the same should be secured by a certain deed of covenants, bearing even date with the above written bond or obligation, and to be made between the said [*grantor*] and the above bounden [*sureties*] of the one part, and the said [*grantee*] of the other part; AND that the same should also be secured by the bond and warrant of attorney of the said [*grantor*] and [*sureties*], who have agreed to join therein as sureties (*b*),

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A. as surety for B. executed a joint bond and warrant of attorney to secure an annuity to C. After the execution by A. and B., it was discovered that part of A.'s christian name had been omitted in the body of those instruments, and he re-executed them after such name had been inserted, without the knowledge of B. In an action brought against A., in the King's Bench, on the bond, he pleaded a judgment recovered against him and B. The Court of Common Pleas afterwards refused to set aside a joint judgment entered up on the warrant of attorney, on the application of A., as that instrument was not defeated by the insertion of his christian name, and as he had recognized the validity of the judgment, in the action brought against him on the bond.

(*b*) In Trinity Term 1818, the following case was determined by the Court of Common Pleas; which being of considerable importance, not only as connected with annuities, but also as to the re-execution of deeds in general, is stated at length.

Mr. Serjt. Lens on a former day in this term, obtained a rule *nisi*, that the judgment which had been signed in this cause, and the warrant of attorney on which it was founded, might be set aside on an affidavit of the defendant Radcliffe, which stated, that in November 1800, (his name being then Emilius Henry Delme, he having since taken the surname of Radcliffe), at the request of Brummell, joined him in a bond and warrant of attorney, for the purpose of granting an annuity to Crick the testator. That by the bond, the defendants were expressed to be jointly and severally bound to Crick, in the penal sum of 720*l.*, conditioned (after reciting that Crick had contracted with Brummell, for the purchase of an annuity of 60*l.*, to be payable quarterly to Crick,

during the lives of both the defendants, or the survivor of them, for 360*l.*, to be secured to him by the bond of Brummell (as principal,) and Radcliffe as his surety, and also by their warrant of attorney for confessing judgment thereon, which judgment was intended to be immediately entered up on record in this court against them, in an action of debt for 720*l.*, that if the defendants, or either of them, should pay the annuity, or in case they should think fit to repurchase the same on certain terms therein expressed, the obligation should be void. That by the warrant of attorney, the defendants were jointly and severally to confess judgment on the bond. That several days after both the defendants had executed these instruments; Radcliffe was called on by Crick's attorney, and requested to re-execute the same, on account of an alteration having been made in his name, which had been written in the bodies of those instruments when they were executed "Emilius Delme" only, and that the word "Henry," was afterwards added and interlined as part of his name; and that he accordingly re-executed the same, but that they were not re-executed by Brummell after such alteration and interlineation; that a joint judgment was entered up in Michaelmas Term, 41 Geo. III. against both the defendants, by virtue of the above warrant of attorney, and that Radcliffe had lately been called on by a *scire facias*, to shew cause why the plaintiff should not have execution of the said judgment.

BOND, WITH COLLATERAL SECURITIES, AND TWO SURETIES, REPURCHASABLE.

Under these circumstances, the learned Serjeant contended, that as Crick the grantee had omitted to procure the re-execution of the bond and warrant of attorney by Brummell, after the alteration made in Radcliffe's name, these instruments were not only void as against Brummell, but if Radcliffe should be compelled to pay the annuity, he could not legally proceed, on those securities, to enforce payment from Brummell, and consequently that a joint judgment could not be sustained: that the insertion of the christian name of Henry before Radcliffe, after the instruments had been executed both by him and Brummell, was a material alteration; and that whether it was so or not, still, as it had been done at the instance of the grantee, it was sufficient to invalidate them. He cited *Pigott's* case, 11 Co. 27, and insisted that as Brummell was at all events discharged by the alteration in the warrant of attorney, the joint judgment could not be sustained against Radcliffe alone.

Mr. Serjeant Vaughan and Mr. Serjeant Pell, now showed cause on an affidavit of the solicitor, who prepared the securities; that they were executed on the 5th of November 1800, and that judgment was

BOND, WITH COLLATERAL SECURITIES, AND TWO SURETIES, REPURCHASABLE.

entered up in Michaelmas Term following; that previous to the annuity being enrolled, it was observed, that Radcliffe had signed his name at the foot of the bond and warrant of attorney "E. H. Delme;" that the solicitor afterwards learnt, that he had the name of Henry as well as Emilius, and he therefore caused the former to be inserted in the body of the securities, between the words Emilius and Delme, and which Radcliffe afterwards re-executed. It was further sworn, that in the last Michaelmas Term, an action was commenced in the King's Bench, against Radcliffe, on the bond, to which he pleaded a plea of judgment recovered by Crick in his life-time, against him jointly with Brummell, on which issue was joined; and as the roll was not carried in on entering up the judgment, nor at the time the plea was pleaded, Radcliffe caused an entry of a judgment on the bond, as directed by the warrant of attorney, and on a day being given to produce the record, an office copy of that entry was produced, and he obtained judgment. It was therefore submitted, that Radcliffe had recognized the validity of the judgment which had been entered up before the alteration was made in the securities; at all events, he cannot now turn round and say, that this is an invalid judgment, when he availed himself of it as an existing judgment to defeat the action brought against him on the bond. If there had been any legal objection to the judgment, he should then have availed himself of it; and it is now too late for him to dispute the validity of the securities on which it was founded.

Mr. Serjeant Lens and Mr. Serjeant Best, in support of the rule, observed, that this being a legal objection, the action brought on the bond in the Court of King's Bench, afforded no answer to it. The defendant Radcliffe is merely a security for Brummell. If, therefore, his remedy be lost against his principal, he is entitled to this application, to which alone he can have resort. The alteration in the bond and warrant of attorney has destroyed their effect as joint securities, and the re-execution has rendered them altogether different instruments. Although it might be unnecessary, still, having been re-executed, the principal should have been applied to, to re-execute also. The securities, as executed by both parties, were joint and several, and as the alteration was afterwards made at the instance of the grantee, and re-executed by one only, it destroyed the joint part of those securities; and therefore having vacated those instruments as to one part, they cannot be used for the purpose of sustaining a judgment entered up against both.

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Lord Chief Justice Gibbs.—This is an application to set aside a judgment and the warrant of attorney on which it was entered up. This latter instrument was given as a collateral security to an annuity bond, in which the defendant Brummell was the principal, and Radcliffe, who now makes this application, his surety. At the time the bond and warrant of attorney were executed, the grantee was not aware that Radcliffe was called "Henry," as well as "Emilius," and he did not discover it until he saw his signature at the foot of those instruments. He was then fearful that the warrant of attorney might prove defective, and therefore procured Radcliffe to re-execute it, having previously caused an alteration to be made throughout the body of it, by interlining and inserting the word "Henry," between "Emilius," and "Delme." In point of fact, the warrant of attorney was perfect, without this alteration; but there can be no doubt, but that judgment may now be entered up on it, Radcliffe himself not only having consented to such alteration, but re-executed the instrument;—besides, in an action on the bond brought against him in the Court of King's Bench, he pleaded a judgment recovered by the testator against himself and Brummell, thereby not only recognizing the validity of the judgment, but by making use of it, defeating that action; and after that, he makes this application, whereby he seeks to set it aside. Under these circumstances, the Court are of opinion, that they cannot do this; first, because the nature of the securities was not defeated by the insertion of the word "Henry," to which alteration Radcliffe himself was a party; and secondly, because he afterwards recognized the judgment, as being legally entered up, and availed himself of it in the action brought against him on the bond in the Court of King's Bench. —Rule discharged. *Cooke* v. *Brummell*, 2 Moore, 495.

A deed mentioning only one christian name, when the party has two, is binding on him.

According to *Cole* v. *Parkin*, 12 East, 471, new stamps do not appear to be necessary on such an alteration as the above. However, as the subject of stamps on deeds, &c. is intended to be discussed separately in another part of this work, it is only necessary at present to suggest, as a caution, the impropriety of making any alteration whatever in a deed after it is executed. In the above case, although the alteration did not destroy the validity of the deed, yet the parties must have incurred considerable expense in consequence of that alteration. It might have so happened in the above case, that the number of words, with the addition of the interlineations, would make a greater number of words, than are allowed according to the stamp used; in which case a new stamp on the deed would most certainly have been necessary. So if a memorial of an annuity deed, or a bargain and sale, be not

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for the due and punctual payment of the said annuity of pounds. [(*c*) AND WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of pounds, it was likewise agreed, that all costs, charges, and expenses, attending the said contract, and for preparing and perfecting the several securities for the same, and for preparing and inrolling a memorial thereof, should be borne and paid by the said [*grantor*].] AND WHEREAS the said [*grantee*] hath, on the day of the date of the above written bond or obligation, paid to the said [*grantor*] the said sum of hundred pounds, which he the said [*grantor*] doth hereby admit and acknowledge.

Grantor to pay expences.

Recital of paying consideration.

Condition, for payment of annuity,

NOW THE CONDITION of the above written bond or obligation is such, that if the said [*grantor*], [*surety*], and [*other surety*], or any or either of them, or their, any, or either of their heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural life of him the said [*grantor*], *One* annuity or yearly sum of pounds of lawful money of Great Britain [and Ireland], free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say; on the day of , the day of , the day of , and the day of in every year, by even and equal portions; the first payment thereof to begin and be made on the day of next ensuing the date of the above written bond or obligation: AND ALSO, if the heirs, executors, or administrators of the said [*grantor*], or the said [*sureties*], or either of them, their, or either of their heirs, executors, or administrators, should well and truly

and proportional part.

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enrolled within the limited time, and the parties make a new date and re-execute the deed, in order to get it enrolled, it is clear a new stamp would be requisite, because it would operate as a new deed. [See *Attwood* v. *Small*, 7 Barn. & Cres. 390.]

(*c*) *Vide ante*, 460 (*b*).

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pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, in case the said [*grantor*] should happen to depart this life on any day on which any quarterly payment of the said annuity or yearly sum of pounds shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum of pounds shall have become due, then a proportional part of the quarterly payment of the said annuity or yearly sum of pounds, to be computed from the date of the above written bond or obligation, to the day of the death of the said [*grantor*]; *But* in case any quarterly payment of the said annuity or yearly sum of pounds should have become due at the time of the decease of the said [*grantor*], then from such of the said quarterly days of payment of the said annuity or yearly sum of pounds as shall happen to be next and immediately preceding the day of the decease of the said [*grantor*], to the day of his decease, *Then* the above written bond or obligation shall be void and of no effect (*d*).

Recital of contract for repurchase.

And whereas upon the treaty for the purchase of the

(*d*) In the late case of *Eyre* v. *Bartrop*, 3 Madd. Rep. 221, it was held, that giving time to the principal, the grantee of an annuity, exonerates the surety from past, as well as future, arrears; the following were the circumstances:

Giving time to the principal, the grantee of an annuity, exonerates the surety from past, as well as future, arrears.

In 1819, *E. V. Eyre*, the brother of the plaintiff, granted an annuity to *R. B. Skurray* and *R. Skurray*, of 217*l.* 14*s.* during his life, and the plaintiff joined with him in the grant, as a surety, for the payment of the same, quarterly. In the annuity deed it was provided, that *E. V. Eyre*, or the plaintiff, should, on seven days notice, be at liberty to redeem the annuity on the payment of 1,384*l.* 8*s.* 6*d.* which was something more than the purchase money. The annuity was further secured by demise to *W. H. Skurray*, a trustee, for ninety-nine years, of certain real property, by *E. V. Eyre*, and a bond and judgment of *E. V. Eyre* and the plaintiff.

Some time after, this annuity was, by deed, 12th January, 1810, assigned by *R. B. Skurray*, and *R. Skurray*, to the defendant, together

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with the benefit of the securities, and the defendant entered into a new agreement with *E. V. Eyre*;—and by indenture, 12th January, 1810, reciting the before-mentioned grant of the annuity; and also another indenture, 22d July, 1812, under which the defendant was entitled to another annuity of 125*l.* granted by *E. V. Eyre*; and after reciting that all arrears of the annuities had been paid, and that defendant was willing, and had consented, to allow to said *E. V. Eyre* new and more advantageous terms of repurchasing said first-mentioned annuity, and also the subsequent annuity;—the *Skurrays*, with the privity of *E. V. Eyre*, who was a party to the deed, assigned the annuity of 217*l.*, and the securities, to the defendant, and a new trustee of the defendant's, subject to such right of repurchase as was reserved in the grant of that annuity; "and it was thereby declared and agreed, by and between defendant and *E. V. Eyre*, his heirs, &c., that defendant, his heirs, &c., shall not, nor will, at any time thereafter, until the expiration of five years from the date of the deed, or until the death of *Edward Eyre*, the father of *E. V. Eyre* (which should first happen), demand or sue for either of the said annuities of 217*l.* 14*s.* and 125*l.* or any part thereof, or for any payment for or on account of either of the said annuities;" and it was further agreed that the said annuities should, on certain conditions, be redeemable by *E. V. Eyre*, on more favourable terms than those originally stipulated for in the grants of the annuities.

Edward Eyre, the father, survived the five years, and was living, and the annuities were not redeemed, or the arrears paid to the defendant.

E. V. Eyre being pressed for the arrears of the annuity, the defendant, by agreement, 23d February, 1815, consented to receive them by instalments; the payment of them to be secured by a judgment acknowledged by *E. V. Eyre*.

The plaintiff was not a party to the deed of the 12th January, 1810, nor concurred in its provisions; nor was he a party to the agreement of the 23d February, 1815.

The instalments not being paid, the plaintiff was called upon to pay the arrears of the first-mentioned annuity, and the defendant threatened to take out execution against him upon the judgment; but the plaintiff contended, that in consequence of the deed of January, 1810, and the agreement in 1815, he, as surety, was discharged.

The *prayer* of the bill was, that it might be declared that the plaintiff, as a surety for the payment of the annuity according to the terms the indenture of the 1st May, 1809, became released and discharged therefrom by the effect of the subsequent dealings and transactions between the defendant and *E. V. Eyre* respecting the same; and that the

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defendant might be restrained from issuing execution on the judgment, and from commencing an action, &c., or from otherwise proceeding in respect of the said annuity.

An injunction was obtained, for want of an answer, until further order.

A motion was now made to dissolve the injunction upon the coming in of the answer.

The *answer* admitted the facts stated in the bill, except that it did not admit that the plaintiff was a surety only; but notice was given to produce the original deed, on the face of which it appeared that he was only a surety.

Mr. *Bell*, and Mr. *Wilbraham*, in support of the motion:

The plaintiff is a mere surety, and the effect of giving time to the principal, without the consent of the surety, has exonerated him from all claims in respect of past or future arrears of the annuity. They cited *Rees* v. *Berrington*, 2 Ves. Jun. 540; and see ex parte *Gifford*, 6 Ves. 809, and 18 Ves. 28. and *Richard Burke's* case cited by Lord Eldon in *English* v. *Darby*, 2 Bos. and Pul. 62. who was a co-surety for an annuity: when it was held, that the grantee, having given time to the principal, could make no demand against the surety.

Sir *S. Romilly* and Mr. *Treslove*, contra:—It may be admitted as a general rule, that time given to the principal discharges the surety; but it only discharges him in respect of what accrues during the time given to the principal. In this case, the five years given to the principal, by the deed of the 12th January, 1810, and by the agreement in 1815, discharged the surety from all claims in respect of the annuity during that period, but not from arrears accruing afterwards. The grantee might let the annuity run in arrear: that would not exonerate the surety.* Suppose two, one as surety, enter into a bond for the payment of the principal sum in two years, with interest in the mean time, and the obligee afterwards agrees not to call for the interest until the end of two years: this agreement would exonerate the surety from the payment of the interest; but as to the principal, he would not be

* It has been held at law, that laches in not calling upon the principal so soon as they might have done if the accounts had been properly examined from time to time, is no estoppel at law, whatever remedy there may be in equity. *Trent Navigation* v. *Harley*, 10 East, 48. If sureties, co-obligors, *call upon the creditor to sue*, which he forbears doing, the loss, it seems, would fall upon the creditor. Ex parte *Mure*, 2 Cox, 74.

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said annuity or clear yearly sum of pounds hereinbefore mentioned, it was mutually agreed by and between the said [*grantor*], [*sureties*], and the said [*grantee*], that they, the said [*grantor*], [*sureties*], or either of them, or the heirs, executors, or administrators of the said [*sureties*], should at any time hereafter be at liberty to repurchase the said annuity or clear yearly sum of pounds, upon giving unto the said [*grantee*], his executors, administrators, or assigns, six calendar months notice in writing, of such their or either of their intention, and upon paying unto the said [*grantee*], his executors, administrators, or assigns, at the expiration of the said six calendar months, the full sum of hundred pounds of lawful money of Great Britain, being the original purchase money, as and for the consideration of such re-purchase of the said annuity; together with all arrears which should be due on the said annuity; and a proportional part thereof from the last day of payment preceding such repurchase, up to and including the day of repurchasing the same: *Or* that they the

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discharged. It is a legal question, and the plaintiff should be left to his remedy by defence at law.

Sir John Leach, Vice-Chancellor: — The defendant is proceeding to execution upon the judgment, and the plaintiff comes here for equitable relief. It could not be denied, that if by any arrangement between the creditor and the debtor, the situation of the surety is altered, that he is thereby discharged; but it is said that the situation of the surety is here only partially altered during the five years; and that in respect of subsequent payments it remains the same. I am of opinion, however, that the deed of January, 1810, and the agreement of February, 1815, and the change in the terms of the redemption, have either directly, or by their consequences, wholly altered the situation of the surety, and that he is thereby wholly discharged.—Motion refused.

[*See Bank of Ireland* v. *Beresford* 6. Dow. 234. The same principles which discharge a surety in equity will also discharge him at law, and a Court of Equity will not send a party suing there, to a court of law. *Samuel* v. *Howarth*. 3 Mer. 277; but a surety on a bond will not be relieved, unless there is an express contract for the purpose. *Heath* v. *Key*, 1 Yo. and Jer. 434. *Ed.*]

said [*grantor,*] [*sureties*], or either of them, or the heirs, executors, or administrators of the said [*sureties*], should at any time hereafter be at liberty to repurchase the said annuity or clear yearly sum of pounds upon giving unto the said [*grantee*], his executors, administrators, or assigns, seven days notice in writing of such their or either of their intention, and upon paying unto the said [*grantee*] his executors, administrators, or assigns, at the expiration of the said seven days, the full sum of hundred and pounds, being the original purchase-money, and two quarterly payments of the said annuity, of lawful money of Great Britain, as and for the consideration of such repurchase of the said annuity; together with all arrears which should be due on the said annuity; and a proportional part thereof from the last day of payment preceding such repurchase, up to and including the day of repurchasing the same:

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Now *it is hereby Declared,* That in case the said [*grantor*], [*sureties*], or either of them, or the heirs, executors, or administrators, of the said [*sureties*], should at any time hereafter be minded and desirous of repurchasing the said annuity or yearly sum of pounds, and of such their or either of their intention, should give unto the said [*grantee*], his executors, administrators, or assigns, six calendar months notice in writing, that he the said [*grantee*], his executors, administrators, or assigns, shall and will, at the end of six calendar months, from the time such notice shall be given as aforesaid, on receiving all and every sum and sums of money whatsoever that shall be due for the arrears of the said annuity, together with a proportional part thereof from the last day of payment preceding such repurchase, up to and including the day of repurchasing the same as aforesaid, accept, receive, and take the said sum of hundred pounds, as and in full for the repurchase of the said annuity or yearly sum of pounds: Or in case the said [*grantor*], [*sureties*], or either of them, or the heirs, executors, or administrators, of the said [*sureties*], should at any time hereafter be minded and desirous of repurchasing the said annuity or clear yearly sum of pounds, and should give seven days notice in

Declaration, enabling grantee or sureties to repurchase, on giving six months notice;

or on paying half a year's annuity in lieu of notice.

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writing of such their or either of their intention unto the said [*grantee*], his executors, administrators, or assigns, that he the said [*grantee*], his executors, administrators, or assigns, shall and will, at the end of seven days from the time such notice shall be given as aforesaid, on receiving all and every sum and sums of money whatsoever that shall be due for the arrears of the said annuity, together with a proportional part thereof from the last day of payment preceding such repurchase, up to and including the day of repurchasing the same as aforesaid, accept, receive, and take the said sum of hundred and pounds, as and in full for the repurchase of the said annuity or yearly sum of pounds: AND on receiving either of the said sums, as the case may happen, and all arrears of the said annuity or clear yearly sum of pounds, and such proportional part thereof as aforesaid, if such repurchase should be made by the said [*grantor*], shall and will deliver the above written bond or obligation to the said [*grantor*], to be cancelled; *And* then, and in such case, the said annuity or yearly sum of pounds shall cease, determine, and be no longer paid or payable; *But* if such repurchase should be made by the said [*sureties*], or either of them, or by their or either of their heirs, executors, or administrators, the said annuity or yearly sum of pounds, shall continue for the benefit of the person or persons who shall repurchase the same; and the same annuity, and the several securities for the same, shall be assigned, or otherwise assured, by the said [*grantee*], his executors, administrators, or assigns, unto the person or persons repurchasing the same, or otherwise as he or they shall direct or appoint.

If repurchase made by sureties, annuity to continue for their benefit.

SEALED AND DELIVERED by the above named [*obligor*], [*sureties*], and [*obligee(e)*], in the presence of

(e) *Vide ante*, 470 (*d*); 483 (*a*).

BOND TO TWO JOINT TENANTS, COLLATERALLY SECURED, AND REPURCHASABLE.

BOND *for securing an* ANNUITY *to* TWO *or more as* JOINT TENANTS, *for the Grantor's Life; collaterally secured by an Indenture of even Date, and two Warrants of Attorney for confessing Judgments in England and Ireland; with Power to repurchase: a short Form.*

Obligation from one to two or more, as joint tenants.

KNOW ALL MEN *by these presents*, That I [*obligor*] of, &c. am held and firmly bound to [*obligees*] of, &c. in the sum of [*double the purchase money*] of lawful money of Great Britain, to be paid to the said [*obligees*], or to their certain attorney, executor, administrators, or assigns; *For* which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents, *Sealed* with my seal: DATED this day of in the year of the reign of our sovereign lord *George* the *fourth*, by the grace of God of the united kingdom of Great Britain and Ireland king, defender of the faith, and in the year of our Lord one thousand eight hundred and .

Condition for paying annuity,

THE CONDITION of the above written bond or obligation is such, that if the above bounden [*obligor*] should henceforth, during the natural life of him the said [*obligor*], well and truly pay or cause to be paid unto the above-named [*obligees*], their executors, administrators, or assigns, *One* annuity or clear yearly sum of pounds of lawful money of Great Britain, by equal quarterly payments, on the day of , the day of

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, the day of , and the day of , in every year, the first of such quarterly payments to be made on the day of next ensuing the date of the above written bond or obligation: AND in the event of the death of the said [*obligor*] on any other day than one of the said quarterly days of payment, if the executors or administrators of him the said [*obligor*] should well and truly pay or cause to be paid to the said [*obligees*], their executors, administrators, or assigns, a proportional part of the current quarterly payment of the said annuity, in respect of the interval which shall have elapsed from the last preceding quarterly day of payment, up to and until, and inclusively of, the day of such decease as last aforesaid; *All* the said payments to be made at or in the common dining hall of Lincoln's Inn, in the county of Middlesex, without any deduction or abatement thereout for taxes or otherwise: *Being* the same annuity, and the same proportional part thereof, as are respectivly collaterally secured by two several warrants of attorney, bearing even date with the above written bond or obligation, for confessing judgments against the said [*obligor*] in England and Ireland; *and also* by an indenture, bearing even date with the above written bond or obligation, and made between the said [*obligor*], of the first part, [*obligees*], of the second part, and [*trustee of term*], of, &c. of the third part: OR if the said [*obligor*] should redeem or repurchase the said annuity upon such terms, and in such manner, as in the said indenture* is expressed in that behalf, *Then*, and in either of the said cases, the above written bond or obligation shall be void; but otherwise the same shall remain in full force and virtue.

and proportional part.

Reference to warrants of attorney for confessing judgments in England and Ireland; and to grant and demise.

Repurchasable.

* Or the agreement may be particularly mentioned, as in 513 *ante*.

BOND, FOR TWO LIVES, COLLATERALLY SECURED, AND REPURCHASABLE, ON REPLACING STOCK.

BOND *for securing an* ANNUITY *during the Lives of* TWO PERSONS *and the Life of the* SURVIVOR *of them; collaterally secured by Bond, Warrant of Attorney, and Indenture; and re-purchasable on re-placing Stock, sold by the Obligee for purchasing the Annuity.*

Obligation.

KNOW ALL MEN *by these presents,* that I [*obligor*], of, &c. (*common form of obligation, from one to one,* ut ante, 459.)

Recital of contract for purchasing annuity for two lives, and the life of the survivor.

WHEREAS the above named [*obligee*] hath contracted and agreed with the above bounden [*obligor*], for the purchase of one annuity or yearly sum of hundred pounds of lawful money of Great Britain, to be paid to the said [*obligee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during the natural lives of the said [*obligee*], and [ ] his wife, and the life of the survivor, at or for the price or sum of thousand pounds.

Reference to collateral securities.

AND WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of hundred pounds, it was agreed by and between the said [*obligor*] and [*obligee*], that for more effectually securing the payment thereof unto the said [*obligee*], his executors, administrators, and assigns, the same should be secured by a certain indenture, bearing even date with the above written bond or obligation, and made between the said [*obligor*], of the first part, the said [*obligee*], of the second part, and [*trustee*], of, &c., of the third part; AND that the same should be also secured by the bond and warrant of attor-

BOND FOR TWO LIVES, COLLATERALLY SECURED, AND REPURCHASABLE, ON REPLACING STOCK.

ney of the said [*obligor*]. [(*a*) AND WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of hundred pounds, it was likewise agreed, that all costs, charges, and expenses, attending the said contract, and for preparing and perfecting the several securities for the same, and for preparing and inrolling a memorial thereof, should be borne and paid by the said [*obligor*].] AND WHEREAS the said [*obligee*] hath, on the day of the date of the above written bond or obligation, paid to the said (*b*) [*obligor*] the said sum of thousand pounds, which he the said [*obligor*] doth hereby admit and acknowledge:

Recital of agreement as to expences.

Recital of paying consideration.

Condition, payment of annuity,

NOW THE CONDITION of the above written bond or obligation is such, that if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*obligee*], his executors, administrators, or assigns, for and during the natural lives of them the said [*obligee*], and [ ] his wife, and the life of the survivor of them, ONE annuity, or yearly sum of hundred pounds of lawful money of Great Britain, free from taxes and clear of all other deductions whatsoever, on four days or times in the year, that is to say; the day of , the day of , the day of , and the day of , in every year, by even and equal portions; the first payment thereof to begin and be made on the day of next ensuing the day of the date of the above written bond or obligation: AND ALSO, if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the executors, administrators, or assigns, of the said [*obligee*], in case the survivor of them the said [*obligee*] and [ ] his wife, should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of hundred pounds shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said

and proportional part.

(*a*) This is an unnecessary recital. *Vide ante*, 460 (*b*).

(*b*) *Vide ante*, 485 (*b*).

annuity or yearly sum shall have become due, then a proportional part of the quarterly payment of the said annuity or yearly sum of hundred pounds, to be computed from the day of the date of the above written bond or obligation, to the day of the death of the survivor of them the said [*grantee*] and [ ] his wife; BUT in case any quarterly payment of such annuity or yearly sum of hundred pounds should have become due at the time of the decease of the survivor of them the said [*grantee*] and [ ] his wife, then from such of the said quarterly days of payment of the said annuity or yearly sum of hundred pounds as shall happen to be next and immediately preceding the day of the death of the survivor of them the said [*grantee*] and [ ] his wife, to the day of such survivor's decease, *Then* the above written bond or obligation shall be void and of no effect.

BOND FOR TWO LIVES, COLLATERALLY SECURED, AND REPURCHASABLE, ON REPLACING STOCK.

AND [WHEREAS upon the treaty for the purchase of the said annuity or clear yearly sum of hundred pounds, herein before mentioned, it was mutually agreed by and between the said [*obligor*] and [*obligee*], that the said [*obligor*], his heirs, executors, or administrators, should at any time hereafter be at liberty to repurchase the said annuity or clear yearly sum of hundred pounds, upon giving unto the said [*obligee*], his executors, administrators, or assigns, seven days notice in writing of such his or their intention, and upon transferring into the name of the said [*obligee*], or into the name of his executors, administrators, or assigns, for his and their own use and benefit, thousand pounds three per centum consolidated bank annuities; *And* upon paying unto the said [*obligee*], his executors, administrators, or assigns, all arrears which should be due on the said annuity; *and* a proportional part thereof, from the last day of payment preceding such repurchase, up to and including the day of repurchasing the same:

Recital of agreement for repurchasing annuity, on replacing stock sold out by the obligee for the purchase.

Now] it is HEREBY DECLARED, That in case the said [*obligor*], his heirs, executors, or administrators, should at any time hereafter be minded and desirous of repur-

Declaration of agreement, enabling the obligor to re-

BOND FOR TWO LIVES, COLLATERALLY SECURED, AND REPURCHASABLE, ON REPLACING STOCK.

purchase annuity, on replacing stock.

chasing the said annuity or yearly sum of hundred pounds, and of such his or their intention should give unto the said [*obligee*], his executors, administrators, or assigns, seven days notice in writing; *And* should, at the expiration of the time to be mentioned in such notice, at his or their own costs and charges, transfer into the name of the said [*obligee*], or into the name of his executors, administrators, or assigns, to and for his and their own use and benefit, thousand pounds three per centum consolidated bank annuities; *And* should well and truly pay or cause to be paid unto the said [*obligee*], his executors, administrators, or assigns, all such sums of money as at the time of repurchasing the said annuity shall be due for the arrears thereof; together with a proportional part of the same annuity from the last day of payment preceding such repurchase, up to and including the day of repurchasing the same, as and in full for the repurchase of the said annuity or yearly sum of hundred pounds, *Then* and in such case he the said [*obligee*], his executors, administrators, or assigns, shall and will deliver the above written bond or obligation to the said [*obligor*], his heirs, executors, or administrators, cancelled, or to be cancelled; *And* the said annuity, or yearly sum of hundred pounds, shall cease, determine, and be no longer paid or payable.

SEALED AND DELIVERED by the above named [*obligor*] and [*obligee* (*c*)], in the presence of

(*c*) *Vide ante*, 470 (*d*).

BOND FOR ANNUITY, IN CONSIDERATION OF DEBT, &c.

BOND *for securing an* ANNUITY, *in Consideration of a* DEBT *due on Bond and Simple Contract, and of a further Sum paid to the Grantor; the* ANNUITY *to be further secured by a Warrant of Attorney to confess judgment.*

Obligation.

KNOW ALL MEN *by these presents*, That I [*obligor*], of, &c. am held, &c. (*common form of obligation, from one to one*, ut ante, 459.)

Recital of debt.

WHEREAS the above bounden [*obligor*], on the day of the date of the above written obligation, is and stands justly and truly indebted unto the above named [*obligee*], in the full and just sum of pounds, as well for

Reference to bond.

monies due and owing upon and secured by a certain bond or writing obligatory entered into and executed by the said [*obligor*], to the said [*obligee*], bearing date the day of one thousand eight hundred and , in the penalty of pounds; conditioned for payment by the said [*obligor*], his heirs, executors, or administrators, unto the said [*obligee*], his executors, administrators, or assigns, of the sum of pounds, with interest thereon, on the day of , which was in the year one thousand eight hundred and ; as also for divers and sundry sums of money

Reference to debt on simple contract.

lent and advanced, paid, laid out, and expended by the said [*obligee*], to and for the use and on the account of the said [*obligor*], which the said [*obligor*] doth hereby admit, declare, and acknowledge. AND WHEREAS the said

Recital of agreement for purchase of annuity.

[*obligee*] hath contracted and agreed with the said [*obligor*], for the purchase of one annuity or clear yearly sum of pounds of lawful money of Great Britain, pay-

BOND FOR ANNUITY, IN CONSIDERATION OF DEBT, &c.

able quarterly in manner hereinafter mentioned, free from taxes and other deductions, during the life of him the said [*obligee*], as well in consideration of the said sum of pounds now due and owing from the said [*obligor*] to the said [*obligee*] as aforesaid (*a*), as of the further

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A bonâ fide debt, or sum advanced for grantor's use, a good consideration for an annuity.

(*a*) A debt *antecedently* contracted is a good consideration *in money*, within the annuity act, because it is not necessary, nor was it ever intended, that the money should be actually told down at the time of the grant. If it be a *bonâ fide* transaction, and the money be really paid to the grantor, or to his use, it satisfies the words and meaning of the act. Ex parte *Fallon* and wife, 5 Term Rep. 286. *Symmons* v. *Mortimer*, ibid. 139. [See vol. ii. 326.] So money lent and paid at different times for the education and advancement of the grantor, is a good consideration for the grant of an annuity within the 17 Geo. III. c. 26. s. 3. and such a consideration is sufficiently expressed in the deeds for securing the annuity under the description of "money lent and advanced, and also paid, laid out, and expended, to and for the maintenance, education, and advancement in the world, of the grantor." Lord Kenyon, chief justice, said, If there had been any doubt whether the consideration money had or had not been paid, we would have directed an issue to try that fact: but it appears beyond all doubt that money has been advanced by the plaintiff's wife before her marriage, to the use of the defendant, to a larger amount than the sum stated as the consideration of granting this annuity. Whether we consider the words of the act of parliament, or the decided cases, I think there is no weight in either of the objections taken to this annuity. In the case ex parte *Fallon*, we laid down a rule, which has since been adopted in the Court of Common Pleas, that the consideration money of an annuity need not be paid down in monies numbered at the time. In that case we said that one great object of the legislature, in passing the act, was to prevent goods being forced on the necessitous instead of money, at a price much beyond the real value: but the legislature did not intend to prohibit a debtor granting an annuity for a debt fairly and honestly contracted, which the debtor, perhaps, may have no means of paying, but by granting an annuity. In the present case it appears that the annuity was granted for the best of considerations; the defendant not having the means of educating himself, but being desirous of being placed in a situation in which he might gain an honourable livelihood, applied to the plaintiff's wife to advance money for the purpose of his education: she advanced 1900*l.* for that purpose, at different times, and afterwards consented to take an annuity as for a consideration of 1400*l.* only; and when the defendant

sum of pounds; THE payment of which said annuity or clear yearly sum of pounds is to be secured by the above written bond or obligation, and by a warrant of attorney to confess judgment thereon, to be forthwith entered up of record in his Majesty's Court of King's Bench at Westminster: WHICH said sum of pounds he the said [*obligee*] hath paid unto the said [*obli-*

BOND FOR ANNUITY, IN CONSIDERATION OF DEBT, &c.

To be secured collaterally by warrant of attorney to confess judgment.

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gave instructions for the annuity deeds, he admitted that all this money had been advanced for him. Notwithstanding all this it is now made a serious question in a court of law, whether these deeds are a good security for the annuity; I think it would be a reproach to the administration of justice to put a construction on this act of parliament so contrary to the intention of the legislature, as well as to common honesty. In my opinion the transaction is fairly stated in the memorial, and therefore the rule must be discharged with costs: and in this opinion the other Judges concurred. *Kelfe* v. *Ambrosse*, Clerk. 7 Term. Rep. 551. [See *Tetley* v. *Tetley*, 4 Bing. 418. and *quære* as to the necessity of inrolling such a grant. *Ed.*]

If the consideration for an annuity be partly a debt *antecedently* due for goods sold, and the residue of the consideration be money paid at the time of executing the deed; and the annuity be set aside for informality in registering the memorial, the grantee may recover back the whole consideration. *Shove* v. *Webb*, 1 Term Rep. 732. But the court intimated a very clear opinion, that if any part of the consideration had been for goods delivered *at the time*, which by agreement were to stand for so much money as the value put upon them, then the question would have fairly arisen, whether, as this was in the teeth of the act of parliament, and one of the mischiefs the act meant to remedy, as great frauds were practised in palming goods upon the purchaser [*read* grantor] of the annuity, which were not of half the estimated value: then, the court said, the question would fairly have arisen, whether, if the securities were set aside, the law would have raised any implied promise to pay the value of the goods; and the maxim might have been urged *quod ex maleficio non oritur contractus*.

Previous bonâ fide debt, consideration for granting annuity, may be recovered in assumpsit, on annuity being set aside for informality in memorial.

[An annuity was set aside after a lapse of six years upon the application of the grantor, shewing that the consideration money and person on whose behalf paid, were untruly stated, *Williams* v. *Hockin*, 8 Taunt. 435, and see *Mootham* v. *How*, 7 Taunt. 596, *Williamson* v. *Goold*, 1 Bing. 234, *Drake* v. *Rogers*, 2 Brod. and B. and vol. ii. 326, and *ante*, 358. 460; but the executors of the grantee will not be allowed to recover the consideration, when the annuity has ceased, although there be no memorial. *Davis* v. *Bryan*, 6 B. and C. 651. *Ed.*]

BOND FOR ANNUITY, IN CONSIDERATION OF DEBT, &c.

gor], at or before the sealing and delivery of the obligation above written; the receipt and payment whereof accordingly, the said [*obligor*] doth hereby acknowledge; AND the said [*obligee*] hath delivered to the said [*obligor*] the aforesaid bond or writing obligatory, dated the said day of one thousand eight hundred and , to be cancelled; which the said [*obligor*] doth also hereby acknowledge.

Recital of cancelling bond.

Condition, payment of annuity, &c. quarterly,

NOW THEREFORE THE CONDITION of the above written obligation is such, that if the above bounden [*obligor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the above named [*obligee*], or his assigns, during the term of his natural life, *One* annuity or clear yearly sum of pounds of lawful money of Great Britain, free from taxes and all other deductions whatsoever, at and upon the day of , the day of , the day of , and the day of , in each and every year, by even and equal portions; the first payment thereof to begin and be made upon the day of next ensuing the day of the date of the above written obligation: AND

and proportional part thereof to obligee's decease.

ALSO if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the executors, administrators, or assigns of the said [*obligee*], such a proportional part of the aforesaid annuity or yearly sum of pounds as shall accrue and become due, either from the date of the above written obligation, or from the last quarterly day of payment thereof in the life time of the said [*obligee*], as the case may be, up to and including the day of his decease; *Then* the above written obligation shall be void, and of no effect [; *But* if default should be made of or in payment of the said annuity or yearly sum of pounds, or any part thereof, on any of the said days appointed for payment thereof, or in payment of such proportional part thereof as aforesaid, *Then* the said obligation shall be and remain in full force and effect].

SEALED AND DELIVERED, in the presence of }

COVENANT FOR PAYING ANNUITY FOR SURRENDERING BUSINESS.

COVENANT *for Payment of an* ANNUITY *collaterally secured by Bond, in consideration of resigning the* BUSINESS *of a Surgeon and Apothecary.*

THIS INDENTURE, made the day of , [in the year of the reign of our Sovereign Lord *George* the *Fourth*, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and] in the year of our Lord One thousand eight hundred and ; BETWEEN [*grantee*], of in the county of [*surgeon and apothecary*], of the one part, and [*grantor*], of , in the county of [*surgeon and apothecary*], of the other part. WHEREAS the said [*grantee*] hath, for many years past, exercised and carried on the trade or business of a surgeon and apothecary, and hath established a considerable practice and connection in the said trade or business at aforesaid. AND WHEREAS the said [*grantee*] hath agreed with the said [*grantor*] to resign to or in favour of the said [*grantor*], the said practice and connection in the said trade or business so established by him as aforesaid, in consideration of an annuity or yearly sum of hundred pounds, to be paid by the said [*grantor*], his heirs, executors, or administrators, to the said [*grantee*] and his assigns, during his life, at the times hereinafter mentioned. AND WHEREAS in pursuance of the said agreement on the part of the said [*grantor*], he the said [*grantor*] hath, by his bond or obligation (*a*) in writing under his hand and seal, bearing even date herewith, become bound unto the said [*grantee*], in the penal sum of thousand pounds, with a condition thereunder written, making the same void if the

Parties.

Recital of carrying on business.

Recital of agreement to resign in consideration of annuity for life.

Recital of collateral bond for securing annuity;

(*a*) *Vide* the form of the bond, *ante*, 493.

COVENANT FOR PAYING ANNUITY FOR SURRENDERING BUSINESS.

said [*grantor*], his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto the said [*grantee*] or his assigns, during the term of his natural life, *One* annuity or yearly sum of hundred pounds, of lawful money of Great Britain and Ireland, free from taxes, and without any deduction whatsoever, by half yearly payments, at or on the days or times following, that is to say; the day of , and the day of , in each and every year, by even and equal portions, the first half yearly payment thereof to begin and be made on the day of next ensuing the date of the said bond or obligation, and of these presents: *And also* if the said [*grantor*], his heirs, executors, or administrators should, within twenty days next after the decease of the said [*grantee*], well and truly pay, or cause to be paid, unto the executors, administrators, or assigns of the said [*grantee*], a proportional part of the said annuity for the time which at his decease should have elapsed of the half yearly payment thereof then growing due. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement on the part of the said [*grantee*], and also for and in consideration of the said annuity or yearly sum of hundred pounds, hereinbefore mentioned, to be secured to the said [*grantee*] by the bond of the said [*grantor*], as aforesaid, *He* the said [*grantee*], *doth* by these presents, so far as in him lieth, grant, resign, and yield up unto the said [*grantor*], the liberty or privilege of carrying on and conducting the trade or business of a surgeon and apothecary, heretofore practised and carried on by him the said [*grantee*], in or within the (liberties of London and Westminster), and the adjacent parts thereof, by and in the room and stead, and as the successor, of the said [*grantee*], and all benefit, profits, emoluments, and advantage, to arise or accrue, or be raised or derived, by or from the same. AND THE SAID [*grantee*] doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*grantor*], his executors and administrators, in manner following, that is to say; That he the said [*grantee*] shall and will, as soon as conveniently may be, introduce and recommend the said [*grantor*], to all the patients

and proportional part.

Testatum.

Resignation of business.

Covenant by grantee, to introduce and recommend grantor to his employers.

of or persons employing the said [*grantee*], in his business or profession, as aforesaid: AND shall and will use his utmost and best endeavours to procure the said [*grantor*] to be employed by such persons, in like manner as he the said [*grantee*] hath heretofore been employed by them, in his said trade or business of a surgeon and apothecary, as aforesaid: AND that he the said [*grantee*] shall not, nor will at any time or times hereafter, use, exercise, or carry on, practise, or profess the said trade or business of a surgeon or apothecary, or either of them, within the (liberties (*b*) of London and Westminster, or either of them), or within (ten) English miles from the same (liberties or either of them), without the leave or license of the said [*grantor*], first had and obtained in writing: AND shall not, nor will at any time hereafter, recommend, or procure to be recommended, any other person or persons whomsoever than the said [*grantor*], to any person or persons at this time employing him the said [*grantee*], in his said trade or business of a surgeon and apothecary, or either of them. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*grantee*] and his assigns, that he the said [*grantor*], his heirs, executors, or administrators, or some or one of them, shall and will at all times hereafter, during the life of the said [*grantee*], well and truly pay or cause to be paid unto the said [*grantee*] or his assigns, the said annuity or yearly sum of hundred pounds, on the days or times in the said recited bond or obligation expressed and appointed for payment thereof; together with such proportional part thereof as aforesaid, unto the executors, administrators, or assigns, of the said [*grantee*], according to the true intent and meaning of the said bond or obligation, and of these presents. IN WITNESS whereof the parties above named have hereto (interchangeably) set their hands and seals, the day and year first above written.

COVENANT FOR PAYING ANNUITY FOR SURRENDERING BUSINESS.

And endeavour to procure his being employed by them.

Not to practise within ten miles.

Not to recommend any other person.

Covenant by grantor to pay annuity.

In witness, &c.

(*b*) *Vide ante*, 172 (*d*).

COVENANT FOR PAYING ANNUITY, AND ADDITIONAL PREMIUM; WITH DEFEAZANCE ON JUDGMENT.

COVENANT *to pay an* ANNUITY *for the* GRANTOR'S LIFE, *collaterally secured by Bond; and* COVENANT *to appear at* INSURANCE *Office, or send Certificates of State of Health; with* DEFEAZANCE *on* JUDGMENT, *to be entered up by virtue of Warrant of Attorney.*

THIS INDENTURE, made the day of , [in the year, &c. *George* the *fourth*, &c. (see 525) and] in the year of our Lord One thousand eight hundred and ; BETWEEN [*grantor*], of , in the county of , [*esquire*], of the one part, and [*grantee*], of , in the county of , [*draper*], of the other part. WHEREAS the said [*grantee*] hath contracted and agreed with the said [*grantor*], for the purchase of one annuity or yearly sum of pounds of lawful money of Great Britain and Ireland, to be paid to the said [*grantee*[, his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during the natural life of the said [*grantor*], and to be secured in manner hereinafter mentioned, at or for the price or sum of hundred pounds. [AND on the treaty for the purchase of the said annuity, it was agreed that all the expences of preparing and perfecting the securities for the same, and enrolling a memorial thereof, should be borne by the said [*grantor*].] AND WHEREAS the said [*grantor*], by his bond or obligation, in writing under his hand and seal, bearing even date with these presents, hath become bound unto the said [*grantee*] in the penal sum of thousand pounds; with a *condition* thereunder written for making the same void, if the said [*grantor*] should well and truly

Parties.

Recital of contract.

Recital that grantor was to pay expences.

Recital of bond for

payment of annuity.

pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural life of him the said [*grantor*], *One* annuity or yearly sum of hundred pounds of lawful money of Great Britain and Ireland, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say; the day of , the day of , the day of , and the day of , in every year, by even and equal portions; the first payment thereof to begin and be made on the day of , next ensuing the date of the same bond or obligation: *And also*, if the heirs, executors, or administrators, of the said [*grantor*], should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, in case the said [*grantor*] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of hundred pounds should become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum should have become due, Then a proportional part of the said quarterly payment of the said annuity or yearly sum of hundred pounds, to be computed from the day of the date of the same bond or obligation, to the day of the death of the said [*grantor*]; *But* in case any quarterly payment of such annuity or yearly sum of hundred pounds should have become due at the time of the decease of the said [*grantor*], then from such of the said quarterly days of payment of the said annuity or yearly sum of hundred pounds, as should happen to be next and immediately preceding the day of the death of the said [*grantor*], to the day of his decease. AND WHEREAS the said [*grantor*] hath executed a warrant of attorney, bearing even date with the said bond and these presents, thereby authorising and empowering certain attornies, therein named, to confess a judgment against him in his Majesty's Court of at Westminster, in an action of debt upon the said bond, for the sum of thousand pounds, and costs of suit; *And* it is intended and agreed, that judgment shall be immediately entered thereupon

COVENANT FOR PAYING ANNUITY, AND ADDITIONAL PREMIUM; WITH DEFEAZANCE ON JUDGMENT.

and proportional part

Recital of warrant of attorney to confess judgment.

COVENANT FOR PAYING ANNUITY, AND ADDITIONAL PREMIUM; WITH DEFEAZANCE ON JUDGMENT.

accordingly. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of hundred pounds of lawful money of Great Britain and Ireland, on the day of the date, and immediately before the execution of these presents, paid by the said [*grantee*] to the said [*grantor*], [in notes (*a*) of the Governor and Company of the Bank of England, payable to bearer on demand;] The receipt and payment whereof, he the said [*grantor*] doth hereby admit and acknowledge; and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*grantee*], his heirs, executors, administrators, and assigns, *He* the said [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, with and to the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], shall and will well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural life of him the said [*grantor*], the said annuity or yearly sum of pounds of lawful money of Great Britain and Ireland, free from taxes, and clear of all other deductions whatsoever, on the days and times, and in the manner in the said recited bond or obligation mentioned and appointed for payment thereof: AND that the heirs, executors, or administrators, of the said [*grantor*], shall and will on demand, within twenty days after the death of the said [*grantor*], well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, such proportional part of the said annuity or yearly sum of pounds, for the time which at the decease of the said [*grantor*] shall have elapsed of the quarterly payment of the same annuity growing due at the time of his decease, as in the said hereinbefore in part recited bond or obligation is mentioned: AND ALSO that he the said [*grantor*] shall and will, upon having reasonable notice, at any time or times hereafter, at the request and desire of the said [*grantee*], his executors, administrators, or assigns, appear in person, so often as there may be occasion for so doing, at any

Testatum.

Covenant for payment of annuity.

Covenant by grantor, to attend at Insurance Office, or send vouchers of his health.

(*a*) *Vide ante*, 460 (*a*).

COVENANT FOR PAYING ANNUITY, AND ADDITIONAL PREMIUM; WITH DEFEAZANCE ON JUDGMENT.

office or place of insurance within the cities of London or Westminster; or send the said [*grantee*], his executors, administrators, or assigns, notice of his place of abode, and such vouchers as the office may require, respecting his state of health, from time to time; in order that the said [*grantee,*] his executors, administrators, or assigns, (if he or they should think fit) may insure the life of the said [*grantor*] for any sum or sums of money not exceeding the sum of pounds of lawful money of Great Britain and Ireland; AND ALSO that he the said [*grantor*], shall not nor will, at any time hereafter, depart and leave this kingdom, or go and travel upon the seas, or reside in foreign parts (or take upon himself any military or naval employment), without giving, every time, one month's notice in writing to the said [*grantee*], his executors, administrators, or assigns, to enable him or them to make known the same at the office or offices where the life of the said [*grantor*] shall or may be insured, to the end that the additional premium or premiums, to be thereby incurred, from time to time, for the purpose of keeping on foot any policy or policies of insurance, effected or to be effected by the said [*grantee*], his executors, administrators or assigns, on the life of the said [*grantor*], for any sum or sums of money not exceeding in the whole the sum of pounds of lawful money of Great Britain and Ireland, may be paid unto the office or offices, where the life of the said [*grantor*] may for the time being be so insured; AND FURTHER, that he the said [*grantor*], his heirs, executors, or administrators, shall and will from time to time, and at all times hereafter, well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, and assigns, all such additional premium or premiums of insurance as the said [*grantee*], his executors, administrators, or assigns, shall or may pay unto such office or offices, in respect of the matters last aforesaid, within the space or time of seven days after every or any such payment shall be made as aforesaid, AND THIS INDENTURE FURTHER WITNESSETH, *and it is hereby declared and agreed* by and between the said [*grantor*] and the said [*grantee*], that the said judgment upon the aforesaid bond shall be considered as a security

To give notice of going on the seas, &c.

And to pay additional premiums for insurance.

Defeazance on judgment.

COVENANT FOR PAYING ANNUITY, AND ADDITIONAL PREMIUM; WITH DEFEAZANCE ON JUDGMENT

only for better and more effectually securing the payment of the said annuity or yearly sum of pounds to the said [*grantee*], his executors, administrators, and assigns, during the life of him the said [*grantor*], at the several days and times, and in the manner limited and appointed for the payment thereof, in and by the condition to the said recited bond, and of such proportional part thereof as aforesaid; AND that no execution or executions shall be issued or taken out upon the said judgment, unless and until some payment or proportion of the said annuity or yearly sum of pounds, or some part thereof, shall be in arrear for twenty-one days next after some or one of the days, or after the times in and by the said condition to the said hereinbefore recited bond or obligation limited and appointed for the payment thereof as aforesaid. PROVIDED ALWAYS, *and it is hereby declared and agreed* by and between the said [*grantor*] and [*grantee*]; and the said [*grantor*] for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said [*grantee*], his executors, administrators, and assigns, that when and so often as the said annuity or yearly sum of pounds, or any part thereof, or such proportional part thereof as aforesaid, shall be behind and unpaid by the space of twenty-one days next over or after any of the days or times mentioned or appointed for payment thereof in the condition to the said bond or obligation; *Then*, and so often, and in every such case, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, to sue out such execution or executions, upon or by virtue of the said judgment hereinbefore mentioned, as he or they shall think fit or be advised, for the recovery of the arrears of the said annuity or yearly sum of pounds, and every part thereof; and all costs and charges which the said [*grantee*], his executors, administrators, or assigns, or any of them, shall bear, pay, sustain, or be put unto, for or by reason or means of the non-payment thereof: AND that it shall not be necessary for the said [*grantee*], his executors, administrators, or assigns, to revive, or cause the said judgment to be revived, or to do any act, matter, or thing, to keep the same on foot, not-

COVENANT FOR PAYING ANNUITY, AND ADDITIONAL PREMIUM; WITH DEFEAZANCE ON JUDGMENT.

withstanding the said judgment shall have been entered on record for the space of one year or upwards; *and* notwithstanding any rule or practice of the court in which the said judgment shall be entered on record, to the contrary; AND that the said [*grantor*], his heirs, executors, administrators, or assigns, shall not nor will have, take, receive, or attempt by any ways or means, to have or receive any advantage for want of reviving or keeping the said judgment on foot. PROVIDED ALWAYS, *and it is hereby agreed and declared*, that from and after the decease of the said [*grantor*], and full payment of all arrears of the said annuity or yearly rent charge or sum of pounds, and such proportional part thereof as aforesaid, and all such costs, charges, damages, and expenses as aforesaid, and all other costs, charges, damages, and expenses in any wise relating to the said judgment and premises, he the said [*grantee*], his executors, administrators, or assigns, shall and will, upon the request, and at the costs and charges of the heirs, executors, administrators or assigns, of him the said [*grantor*], acknowledge satisfaction of the said judgment upon the record thereof. IN WITNESS, &c.

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

COVENANT *by a* TENANT FOR LIFE *to surrender a* COPYHOLD *Estate to the Use of the Grantee of an* ANNUITY *for ninety-nine Years, if the Grantor should so long live; collaterally secured by Bond and Warrant of Attorney to confess Judgment thereon;* USUAL COVENANTS *for Payment of the Annuity, and for Title, &c.* DEFEAZANCE *on the Judgment; and Clause for* REPURCHASE, *after the Expiration of three Years, on giving six Months Notice, and repaying Purchase Money, or on repaying Purchase Money and Half a Year's Annuity, without giving any Notice.*

THIS INDENTURE, made the day of , in the year, &c. *George* the *fourth* &c. and in the year of our Lord One thousand eight hundred and ; BETWEEN [*grantor*], of, &c. of the one part, and [*grantee*], of, &c. of the other part. WHEREAS at a general court leet and court baron of the manor of , in the county of , held on the day of , one thousand eight hundred and , *it was presented* by the homage, that [*ancestor*], then late one of the customary tenants of the said manor, died seised of *All that* customary messuage or tenement, &c. situate, lying, and being within the said manor, which were theretofore the estate of [ ] deceased; and that upon his death, the said [*grantor*], his son, became intitled to the same premises for his life, under and by virtue of a surrender made by the said [*ancestor*], at a court holden for the said manor on the day of one thousand seven hundred and , to the uses of a certain indenture

Parties.

Recital of grantor's admission.

bearing date the day of one thousand seven hundred and , in the same surrender particularly mentioned, and set forth: *At* which court the said [*grantor*] humbly prayed of the lord to be admitted tenant to the premises so surrendered by the said [*ancestor*] his father, on the said day of one thousand seven hundred and to the uses of the said indenture: *To* whom the lord by his steward granted seisin by the rod, *To hold* unto the said [*grantor*], and his assigns, for and during the term of his natural life, according to the tenor and true intent and meaning of the said indenture by the rod, at the will of the lord, according to the custom of the said manor, by the rents, customs, and services therefore due and of right accustomed. AND WHEREAS the said [*grantee*] hath contracted and agreed with the said [*grantor*], for the purchase of one annuity or clear yearly sum of pounds of lawful money of Great Britain and Ireland to be paid to the said [*grantee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during the term of ninety-nine years, if the said [*grantor*] should so long live, to be secured by the bond or obligation of the said [*grantor*], and a warrant of attorney for entering up judgment thereon: *and* by a surrender of the said copyhold premises, on the condition, and upon the trusts hereinafter mentioned, at or for the price or sum of hundred pounds [(*a*) out of which said sum of hundred pounds it was agreed, upon the treaty for the purchase of the said annuity, that all costs, charges, and expences attending the said contract, and for preparing and perfecting the several securities for the same, and making such surrender, and also for preparing and enrolling a memorial thereof, should be borne and paid by the said [*grantor*].] AND WHEREAS the said [*grantor*], by his bond or obligation in writing under his hand and seal, bearing even date with these presents, hath become bound unto the said [*grantee*] in the penal sum of thousand pounds; *With a Condition* thereunder written for making the same void, if the said [*grantor*] should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

Recital of contract for purchase of annuity,

to be secured by bond, judgment, and surrender.

Recital of bond for paying annuity for grantor's life,

(*a*) *Vide ante*, 460 (*b*).

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

assigns, for and during the term of ninety-nine years, if the said [*grantor*] should so long live, *One* annuity or yearly sum of pounds of lawful money of Great Britain and Ireland, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say; on the day of , the day of , the day of , and the day of , in every year, by even and equal portions; the first payment thereof to begin and be made on the day of next ensuing the date of the same bond or obligation: AND ALSO, if the heirs, executors, or administrators, of the said [*grantor*], should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, in case the said [*grantor*] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of pounds should become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum of pounds should become due, then a proportional part of the quarterly payment of the said annuity or yearly sum of pounds, to be computed from the day of the date of the same bond or obligation to the day of the death of the said [*grantor*]; *But* in case any quarterly payment of such annuity or yearly sum of pounds should have become due at the time of the decease of the said [*grantor*], then from such of the said quarterly days of payment of the said annuity or yearly sum of hundred pounds, as should happen to be next and immediately preceding the day of the death of the said [*grantor*], to the day of his decease; AND the said [*grantor*] hath executed a warrant of attorney, bearing even date with these presents, authorising and empowering certain attornies therein named to confess a judgment against him in his Majesty's court of at Westminster, in an action of debt upon the said bond, for the said sum of [*penal sum*] thousand pounds, and costs, at the suit of the said [*grantee*]. NOW THIS INDENTURE WITNESSETH, That in pursuance of the said agreement, and for and in consideration of the sum of hundred pounds of lawful money of Great Britain and Ireland, by the said [*grantee*] to the said [*grantor*] in hand

and proportional part.

Recital of warrant of attorney.

Testatum.

Consideration in bank notes.

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

well and truly paid at or before the sealing and delivery of these presents, [(*b*) in notes of the Governor and Company of the Bank of England, payable to bearer on demand,] The receipt and payment whereof he the said [*grantor*] doth hereby admit and acknowledge, and of and from the same and every part thereof, Doth acquit, release, and discharge the said [*grantee*], his heirs executors, administrators, and assigns, and every of them, for ever by these presents, he the said [*grantor*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*] shall and will (*c*), at the request of the said [*grantee*], his executors, administrators, or assigns, but at the proper costs and charges of the said [*grantor*], surrender into the hands of the lord or lords, lady or ladies of the said manor of for the time being, according to the custom of the said manor, ALL THAT the said hereinbefore mentioned customary messuage or tenement and premises, with the appurtenances, TO THE USE of the said [*grantee*], his executors, administrators, and assigns, for and during and unto the full end and term of ninety-nine years, if the said [*grantor*] should so long live (*d*), to be held at the

Covenant by grantor, to surrender copyhold premises according to the custom of the manor.

To the use of grantee, for ninety-nine years, if grantor should so long live.

(*b*) *Vide ante*, 460 (*a*).

(*c*) A previous surrender is to be generally preferred. *Vide, infra*, 563 (*c*).

(*d*) The statutes 29 Car. II. c. 13. s. 12. and 14 Geo. II. c. 20. s. 9, respecting estates *pour autre vie*, do not extend to copyholds. *Withers* v *Withers*, Ambl. 152. 7 Bac. Abr. 417 (B). *Zouch* v. *Force*, 7 East, 186. 1 Watk. Cop. 302. 2 Ibid. 196. [*Doe dem. Foster* v. *Scott* 4 B. and C. 706.] And therefore, if an estate *pour autre vie* in copyholds be limited to a man and his executors, administrators, and assigns, on the death of the tenant *pour autre vie*, the estate would determine, at law at the least, Noy's Maxims, 116, 9th ed. [but it seems there may be a custom to the contrary, see *Doe* v. *Goddard*, 1 B. and C. 522. *Wellman* v. *Bowring*, 1 Sim. and Stu. 38.]

statutes respecting estates *pour autre vie* do not extend to copyholds.

By creating a term for years, if the tenant for life should so long live, the grantee acquires the benefit of the estate for life, although nominally a reversion continues in the grantor; because it is *possible* the estate for life may last longer than the number of years mentioned; and on account of the legal principle, that an estate for life according

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

will of the lord, according to the custom of the said manor; UPON CONDITION *nevertheless*, that if the said [*grantor*], or his assigns, should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of pounds, in manner and form in the said recited bond or obligation mentioned and appointed for payment thereof, *Then* the said surrender shall be void. AND *it is hereby declared and agreed* by and between the said parties to these presents, that in case default should be made in payment of the said annuity or yearly sum of pounds, according to the condition of the said recited bond or obligation, and hereinbefore mentioned, then he the said [*grantee*], his executors, administrators, and assigns, shall be possessed of and interested in the said messuage or tenement and premises hereinbefore mentioned, UPON TRUST, by and out of the rents, issues, and profits of the said messuage or tenement and premises hereinbefore covenanted to be surrendered, or any part or parts thereof; or by mortgage or sale thereof, or of any part or parts thereof; or by all or any of the same ways and means; or by such other ways and means whatsoever as to him the said [*grantee*], his executors, administrators, or assigns, shall seem meet, to raise and levy such sum and sums of money as shall be sufficient to pay and satisfy the said annuity or yearly sum of pounds secured by the said bond or obligation, or so much thereof as shall from

Upon condition, if grantor pay annuity agreeably to bond, surrender to be void. But in default of payment,

upon trust, out of rents to raise and pay himself annuity and costs;

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to the gradation of estates, is to be *presumed* of longer duration than an estate even for a thousand, or any other number of years. By this form of limitation, the copyhold estate will be *possessed* by the same persons to whom the annuity will be payable, in case of his death before the annuity is repurchased or determined, thereby preventing the inconvenience of having the estate in the heir of the grantee, whose infancy might cause difficulties in procuring a re-surrender on repurchasing the annuity, if the surrender should have become absolute by nonpayment, *vide postquam*, 563 (*c*); and as the heir of the grantee would take the estate *pour autre vie*, by descent, it seems a fine would be payable on his admission, where a fine is payable on the death of a tenant dying *seised*. Noy's Maxims, 114, 9th ed. *sed vide*. 1 Watk. Cop. 313. Gilb. Ten. 327. Scriv. Cop. 402, 2nd ed. [the fine is payable by the heir as a *purchaser*, and not by descent. 10 Co. 58 *a* and 2 Bl. Com. 259.]

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEASANCE ON JUDGMENT; REPURCHASABLE.

time to time happen to be in arrear and unpaid at the days and times in and by the condition to the said bond or obligation mentioned and appointed for the payment thereof; *And also* all such sum and sums of money, losses, costs, charges, damages, and expences, (if any), as the said [*grantee*], his executors, administrators, or assigns, or any of them, shall pay, sustain, expend, or be put unto, for, or by reason or means of the non-payment of the said annuity or clear yearly sum of pounds, or any part thereof, at or on the days and times, and in the manner in and by the condition to the said bond or obligation mentioned and appointed for the payment thereof, or for the performance of the trusts hereby declared or expressed of and concerning the said messuage or tenement and premises hereinbefore covenanted to be surrendered, or otherwise howsoever relating thereto; *And* shall and do retain, pay, and apply the monies so to be raised, in payment and satisfaction thereof accordingly (*e*); *And subject* to the trust aforesaid, the said messuage or tenement and premises hereinbefore covenanted to be surrendered, shall be IN TRUST for the said [*grantor*] and his assigns, for and during the said term of ninety-nine years, determinable as aforesaid, PROVIDED ALWAYS, *and it is hereby declared and agreed* by and between the said parties to these presents, that all and every the contracts, agreements, sales, mortgages, dispositions, conveyances, surrenders, assurances, acts, deeds, matters, and things, which shall be entered into, made, done, or executed, by the said [*grantee*], his executors, administrators, or assigns, of or concerning the said messuage or tenement and premises hereby covenanted to be surrendered, or any part thereof shall to all intents, constructions, and purposes whatsoever, be as valid and effectual in the law, although the said [*grantor*], or his assigns, should not execute the same, or join therein, or assent thereto, as such contracts, agreements, sales, mortgages, dispositions, conveyances, surrenders, assurances, acts, deeds, matters, and things would have been, if the said [*grantor*], or his assigns, had duly ex-

and subject thereto, in trust for grantor and his assigns.

Sales and mortgages by grantee, to be valid without grantor's concurrence.

(*e*) If it be the agreement, add trusts for investing the residue of the mortgage or purchase money, and the rents and profits upon government securities, *ut infra*, 552.

Trusts to invest residue on government securities.

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

ecuted the same, and joined therein, or assented thereto; *And* that the person or persons to whom the said [*grantee*], his executors, administrators, or assigns, shall convey or otherwise dispose of the said messuage or tenement and premises hereby covenanted to be surrendered, or any of them, or any part or parts thereof, shall, notwithstanding the said [*grantee*] should not execute the same, or join therein, or assent thereto, be entitled to have, hold, and enjoy the same messuage or tenement and premises, against the said [*grantor*] and his assigns, and all persons claiming, or to claim, by, from, through, under, or in trust for him or them.

Grantee's receipt for rents and profits, and purchase and mortgage monies, to be effectual discharges.

PROVIDED ALWAYS, *and it is hereby further declared and agreed* by and between the said [*grantor*] and [*grantee*], and the said [*grantor*] doth hereby direct and appoint, that the person or persons who shall pay to the said [*grantee*], his executors, administrators, or assigns, all or any part of the rents and annual profits of the said messuage or tenement and premises hereby covenanted to be surrendered, or advance any money upon any sale or sales, or upon the security of any mortgage or mortgages of the same premises, or any part thereof, or otherwise, pursuant to the trusts hereinbefore contained, shall not be obliged or required to see to the application of the said rents, profits, and money respectively, or any of them; nor to enquire whether such receipt of the rents and profits, sale or sales, mortgage or mortgages, is or are necessary, for all or any of the purposes hereinbefore mentioned; nor be answerable or accountable for the misapplication or nonapplication of the same: AND that all receipts which shall be given by the said [*grantee*], his executors, administrators, or assigns, for all or any part of the said rents, profits, and money respectively, shall be good and sufficient acquittances and discharges for the sum and sums of money which by such receipts, and every of them, shall be acknowledged or expressed to be or to have been received.

Grantee not to be answerable for more money than comes to his hands.

PROVIDED ALSO, *and it is hereby further declared and agreed* by and between the said parties to these presents, that the said [*grantee*], his executors, administrators, and assigns, shall not be charged or chargeable with or for any sum or sums of money, other than such as shall actually and respectively come to his or their hands, by virtue of these presents; nor with or for any loss or damage

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

which may happen in or about the execution of all or any of the trusts aforesaid, without his or their wilful default. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, by these presents, in manner following, that is to say; That he the said [*grantor*], his heirs, executors, or administrators, shall and will well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of pounds, and also such proportional part thereof as aforesaid, free from taxes, and clear of all other deductions whatsoever, at the days and times, and in manner and form expressed, limited, and appointed for payment thereof in and by the condition to the said in part recited bond or obligation: [AND ALSO that he the said [*grantor*] is, at the time of the sealing and delivery of these presents, lawfully and rightfully seised of and in, or well entitled unto, the said messuage or tenement and premises hereinbefore covenanted to be surrendered, of a good estate in possession for his life, according to the custom of the said manor, without any condition, use, trust, power of revocation, limitation of new or other use or uses, or any other restraint, matter, cause, or thing whatsoever, which can or may defeat, alter, change, revoke, determine, make void, or incumber, the same or any part or parts thereof:] AND ALSO that he the said [*grantor*] now hath in himself good right, full power, and lawful and absolute authority, to surrender the said messuage or tenement and premises hereinbefore covenanted to be surrendered as aforesaid, with the appurtenances, to the use of the said [*grantee*], his executors, administrators, and assigns, for and during the said term of ninety-nine years, if the said [*grantor*] should so long live, upon the trusts, and to and for the intents and purposes, hereinbefore mentioned, expressed, and declared of and concerning the same, according to the true intent and meaning of these presents: AND FURTHER, that the said messuage or tenement and premises hereinbefore covenanted to be surrendered, shall and lawfully may from time to time and at all times hereafter, remain,

Covenant by grantor for paying annuity.

That he is seised of the premises for life, according to the custom of the manor.

And has power to surrender the same upon trusts declared.

And that premises shall continue upon the trusts declared.

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

continue, and be to the use of the said [*grantee*], his executors, administrators, and assigns, for and during the said term of ninety-nine years, determinable as aforesaid, upon the trusts and to and for the intents and purposes hereinbefore mentioned, expressed, and declared, of and concerning the same; *And* shall and may be accordingly, peaceably, and quietly had, held, and enjoyed, without the lawful let, suit, hinderance, interruption, or denial, of him the said [*grantor*], or his assigns, or any other person or persons whomsoever: AND free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise, by him the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against, all and all manner of former and other gifts, grants, bargains, sales, mortgages, surrenders, jointures, forfeitures, free-bench, uses, trusts, entails, rents, arrears of rent, statutes, judgments, recognizances, titles, charges, and incumbrances whatsoever, had, made, done, or committed, or knowingly or willingly suffered, by the said [*grantor*], or any other person or persons whomsoever, by, through, or with, his act, means, default, procurement, or privity: AND MOREOVER, That he the said [*grantor*] shall and will from time to time and at all times hereafter, upon the reasonable request of the said [*grantee*], his executors, administrators, or assigns, but at the proper costs and charges of the said [*grantor*], his heirs, executors, administrators, or assigns, make, do, acknowledge, levy, suffer, and execute, or cause or procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, things, conveyances, surrenders, and assurances, in the law whatsoever, for further and better, more perfectly and absolutely, surrendering and assuring the said messuage or tenement and premises hereinbefore covenanted to be surrendered, with their and every of their appurtenances, to the use of the said [*grantee*], his executors, administrators, and assigns, during the said term of ninety-nine years, if the said [*grantor*] should so long live, on the conditions, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared of and concern-

Free from incumbrances.

For further assurance.

ing the same, *As* by the said [*grantee*], his executors, administrators, or assigns, or his or their counsel learned in the law, shall be reasonably devised or advised and required. AND WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of pounds, it was agreed, that the said judgment so to be confessed upon the said bond, for the said sum of [*penal sum*], and costs as aforesaid, should be entered on record in the said court of as of this present [*Michaelmas*] term, [*Hilary*] term next ensuing, or some other subsequent term. Now THIS INDENTURE FURTHER WITNESSETH, *and it is hereby declared and agreed* by and between the said [*grantor*] and [*grantee*], that &c. (*Add defeazance on the judgment*, ut ante, 531). AND WHEREAS upon the treaty for the purchase of the said annuity, or yearly sum of pounds, hereinbefore mentioned, it was mutually agreed by and between the said [*grantor*] and [*grantee*], That the said [*grantor*] (*d*) should at any time after the expiration of the space or time of three years from the date hereof, but not sooner, at his or their own pleasure, be at liberty to repurchase the said annuity or yearly sum of pounds, upon giving unto the said [*grantee*] (*e*), his executors, administrators, or assigns, six calendar months notice in writing of such his or their intention, and upon paying unto the said [*grantee*] (*e*), his executors, administrators, or assigns, the full sum of hundred pounds of lawful money of Great Britain and Ireland, being the original purchase money as and for the consideration of such repurchase; together with all arrears that should be due on the same; and a proportional part thereof, [from the last day of payment preceding such repurchase] up to and including the day of repurchasing the same: *Or* in case the said [*grantor*] (*d*) should be minded and desirous of repurchasing the said annuity or yearly sum of hun-

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

Recital that judgment was to be entered. Defeazance on judgment.

Clause for repurchase after expiration of three years, on giving six months notice and repaying purchase money, or on repaying purchase money and half a year's annuity, without giving notice.

(*d*) If the annuity be granted for the grantee's life, or for the lives of nominees, add,

" his heirs, executors, or administrators,"

GRANTEE'S OR NOMINEE'S LIVES.

(*e*) If the annuity be granted for the grantee's life, say,

" or his assigns,"

GRANTEE'S LIFE.

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

dred pounds, and should not give such six calendar months notice, then that he the said [*grantor*] (*f*) should, at any time after the expiration of the said space of three years, but no sooner, at his (or their) own pleasure, be at liberty to repurchase the said annuity or yearly sum of hundred pounds, upon paying unto the said [*grantee*] (*g*) his executors, administrators, or assigns, the full sum of hundred and pounds of lawful money of Great Britain and Ireland, being the original purchase money and two quarterly payments of the said annuity of hundred pounds, as and for the consideration of such repurchase of the said annuity of hundred pounds, together with all arrears that should be due on the same, and a proportional part thereof [from the last day of payment preceding such repurchase] up to and including the day of repurchasing the same. Now THIS INDENTURE FURTHER WITNESETH, That for effectuating the said last mentioned agreement, and for the considerations aforesaid], *It is hereby declared and agreed* by and between the said parties to these presents, to be the true intent and meaning of these presents, and of the said parties; *And* the said [*grantee*], for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree with and to the said [*grantor*], his executors, administrators, and assigns, and every of them, that in case the said [*grantor*] (*f*) should at any time after the expiration of the space or time of three years from the date hereof, but not sooner, be minded and desirous of repurchasing the said annuity or yearly sum of hundred pounds, and of such his or their intention, should give unto the said [*grantee*] (*g*), his executors, administrators, or assigns, notice in writing by the space of six calendar months, that he the said [*grantee*] (*g*), his executors, admini-

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GRANTEE'S OR NOMINEES' LIVES.

(*f*) If the annuity be granted for the life of the grantee, or for the lives of nominees, add,

"his heirs, executors, or administrators,"

GRANTEE'S LIFE.

(*g*) If the annuity be granted for the life of the grantee, say,

"or his assigns,"

strators, or assigns, shall and will at the expiration of such six calendar months, from the time such notice shall be given as last aforesaid, on receiving all such sums of money whatsoever as shall be then due for the arrears of the said annuity or yearly sum of hundred pounds, together with a proportional part thereof, [from the last day of payment preceding such repurchase] up to and including the day of repurchasing the same as aforesaid, accept, receive, and take the said sum of hundred pounds, as and in full for the repurchase of the said annuity or yearly sum of hundred pounds, secured as aforesaid: *But* in case the said [*grantor*], (*i*) from and after the said space or time of three years, but not sooner, should be minded and desirous of repurchasing the said annuity or yearly sum of hundred pounds, and should not give such six calendar months notice in writing, then that he the said [*grantee*] (*k*), his executors, administrators, or assigns, shall and will, on receiving all sums of money whatsoever that shall be then due for the arrears of the said annuity or yearly sum of pounds, together with a proportional part thereof from the last day of payment preceding such repurchase up to and including the day of repurchasing the same as aforesaid, accept, receive, and take the said sum of hundred and pounds, as and in full for the repurchase of the said annuity or yearly sum of hundred pounds, secured as aforesaid: AND on receipt of either of the said sums, as the case may happen, and all arrears of the said annuity or yearly sum of hundred pounds, secured as aforesaid, and such proportional part thereof as aforesaid, shall and will, at the proper costs and charges in the law of him the said [*grantor*], (*i*)

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

(*i*) If the annuity be granted for the life of the grantee, or for the lives of nominees, add,

GRANTEE'S OR NOMINEES' LIVES.

"his heirs, executors, or administrators,"

(*k*) If the annuity be granted for the life of the grantee, say,

GRANTEE'S LIFE.

"or his assigns,"

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

deliver the said bond to the said [*grantor*] (*l*), cancelled, or to be cancelled; and acknowledge, or cause satisfaction to be acknowledged, on the record of the judgment which shall be entered up by virtue of the said warrant of attorney; and re-surrender the said premises hereinbefore covenanted to be surrendered unto the said [*grantor*] (*m*), or as he or they shall order, direct, or appoint: *And then*, and in such case, the said annuity or yearly sum of hundred pounds shall cease, determine, and be no longer paid or payable, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding. IN WITNESS, &c.

GRANTEE'S OR NOMINEES' LIVES.

(*l*) If the annuity be granted for the life of the grantee, or for the lives of nominees, add,

"his heirs, executors, or administrators,"

GRANTEE'S OR NOMINEES' LIVES.

(*m*) If the annuity be granted for the life of the grantee, or for the lives of nominees, add,

"his heirs and assigns,"

COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

COVENANT *to surrender a* COPYHOLD *Estate of Inheritance,* UPON CONDITION *to be void on Payment or Repurchase of an* ANNUITY *for the Lives of the Grantee and two Nominees, and the Lives and Life of the Survivors and Survivor of them; collaterally secured by Bond and Warrant of Attorney to confess Judgment; But on Default of Payment,* UPON TRUSTS *for sale, and to invest the Purchase Monies on Government Securities, in trust to pay the Annuity:* DEFEAZANCE *on the Judgment; and Proviso for* REPURCHASE *on giving seven Days Notice, and paying the original Consideration Money and half a Year's Annuity in advance.*

THIS INDENTURE, made the day of , in the year of the reign, &c. *George* the *fourth*, &c. and in the year of our Lord 18 ; BETWEEN [*grantor*], of, &c. of the one part, and [*grantee*], of, &c. of the other part. WHEREAS the said [*grantor*] is seised of or well intitled to the inheritance in possession, according to the custom of the manor of in the county of , of and in the several pieces or parcels of land and hereditaments hereinafter covenanted to be surrendered. AND WHEREAS the said [*grantee*] hath contracted and agreed with the said [*grantor*], for the purchase of one annuity or yearly sum of hundred pounds of lawful money of Great Britain and Ireland, to be paid to the said [*grantee*], his executors, administrators, and assigns, free from taxes and clear of all other deductions whatsoever, for and during the natural lives of him the said [*grantee*],

Parties.

Recital of grantor's seisin of a copyhold estate of inheritance.

Recital of contract for annuity.

COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

and [*two nominees*], of, &c. and the lives and life of the survivors and survivor of them; *To* be secured by the bond or obligation of the said [*grantor*], and a warrant of attorney for entering up a judgment thereon: and by a surrender of the said copyhold premises, UPON TRUST as hereinafter mentioned; *At* or for the price or sum of thousand pounds; [(*a*) out of which said sum of thousand pounds it was agreed that all costs, charges, and expences attending the said contract, and for preparing and perfecting the several securities for the said annuity, and for making the said surrender, and also for preparing and inrolling a memorial thereof, should be borne and paid by the said [*grantor*].] AND WHEREAS the said [*grantor*], by his bond or writing obligatory, under his hand and seal, bearing even date with these presents, hath become bound to the said [*grantee*] in the sum of thousand pounds; and the said bond or writing obligatory is conditioned to be void, if the said [*grantor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural lives of him the said [*grantee*], and the said [*nominees*], and the lives and life of the survivors and survivor of them, *One* annuity or yearly sum of hundred pounds of lawful money of Great Britain and Ireland, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say: on the day of , the day of , the day of , and the day of , in every year, by even and equal portions; the first payment thereof to begin and be made on the day of next ensuing the date thereof; *And also* if the said [*grantor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the executors, administrators, or assigns of the said [*grantee*], in case the survivor of them the said [*grantee*] and [*nominees*] should die on any day on which any quarterly payment of the said annuity or yearly sum of hundred pounds should become due, the whole of such

Recital of bond for annuity, for the lives of the grantee and two nominees, and the lives and life of the survivors and survivor of them.

(*a*) *Vide ante*, 460 (*b*).

quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum of pounds should have become due, then a proportional part of the quarterly payment of the said annuity or yearly sum of pounds, to be computed from the day of the date of the same bond or writing obligatory, to the day of the death of the survivor of them the said [*grantee*] and [*nominees*]; *But* in case any quarterly payment of such annuity or yearly sum of pounds should have become due at the time of the decease of the survivor of them the said [*grantee*] and [*nominees*], then from such of the said quarterly days of payment of the said annuity or yearly sum of pounds as should happen to be next and immediately preceding the day of the death of the survivor of them the said [*grantee*] and [*nominees*], to the day of the death of such survivor. AND WHEREAS the said [*grantor*] hath, by a writing under his hand and seal, bearing even date with these presents, authorised [*solicitor residing in town*], one of the attornies of his Majesty's Court of King's Bench at Westminster, or any other attorney of the same court, by confession or otherwise, to suffer judgment to be entered up against him in the said Court of King's Bench, in an action of debt upon the said bond, at the suit of the said [*grantee*], for the sum of [*penalty of bond*] thousand pounds, and costs of suit; and judgment is to be forthwith entered up against the said [*grantor*], under the authority of the said warrant of attorney: (*b*) NOW THIS INDENTURE WITNESSETH, That in pursuance of the said agreement, and for and in consideration of the sum of thousand pounds of lawful money of Great Britain and Ireland, by the said [*grantee*] to the said [*grantor*], in hand well and truly paid, at or before the sealing and delivery of these presents, [in manner following, that is to say; by a draft or cheque bearing even date with these presents, drawn by the said [*grantee*] on Messrs. and Co. bankers, in aforesaid, for the said sum of thousand pounds, payable to the said [*grantor*], or bearer, on demand;] *The* receipt

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Recital of warrant of attorney for confessing judgment on annuity bond.

Consideration paid by a banker's cheque.

SURRENDER PREVIOUSLY MADE.

(*b*) If the surrender have been previously made, *vide post*, 562.

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whereof he the said [*grantor*] doth hereby acknowledge, and thereof and of and from the same and every part thereof, doth acquit, release, and discharge the said [*grantee*], his heirs, executors, administrators, and assigns, and every of them, by these presents, [out of which said sum of thousand pounds the said [*grantor*], immediately after receiving the same, paid to [*solicitor*], of, &c. gentleman, the sum of pounds six shillings and eight pence, for attendances respecting the granting of the said annuity, and for preparing and perfecting the several securities for the same, and for the surrender hereinafter covenanted to be made, and also for preparing and inrolling a memorial thereof,] he the said [*grantor*] DOTH hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said [*grantee*], his heirs, executors, administrators, and assigns, That he the said [*grantor*], and all and every other person and persons having any estate or interest therein, shall and will at the request of the said [*grantee*], his heirs, executors, administrators, or assigns, but at the proper costs and charges of the said [*grantor*], his heirs, executors, or administrators, surrender into the hands of the lord or lords, lady or ladies, of the said manor of for the time being, according to the custom of the said manor, ALL THOSE several pieces or parcels of land, situate, lying, and being at , within the said manor of , and containing by estimation, &c. and all other the lands, tenements, and hereditaments whatsoever, of him the said [*grantor*], holden of the said manor by copy of court roll, with their rights, members, and appurtenances, TO THE USE of the said [*grantee*], his heirs and assigns for ever; UPON CONDITION *nevertheless*, that if the said [*grantor*], his heirs, executors, administrators, or assigns, should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of hundred pounds, in manner and form in the said recited bond or writing obligatory mentioned and appointed for payment thereof; or if the said [*grantor*], his heirs, executors, administrators, or assigns, should repurchase the said annuity or yearly sum of

Covenant to surrender copyhold.

Parcels.

Upon condition, that if grantor pay annuity according to condition of bond, surrender to be void.

hundred pounds, upon the terms and conditions hereinafter mentioned, then the said surrender shall be void. AND *it is hereby declared and agreed* by and between the said parties to these presents, that he the said [*grantee*], his heirs and assigns, shall stand seised and possessed of the said several pieces or parcels of land and hereditaments hereinbefore mentioned, UPON THE TRUSTS, and to and for the intents and purposes, and with, under, and subject, to the powers, provisoes, declarations, and agreements hereinafter mentioned, expressed and declared of and concerning the same, that is to say; UPON TRUST, to permit and suffer the said [*grantor*], his heirs and assigns, to receive and take the yearly and other rents, issues and profits thereof, to and for his and their own use and benefit, until some default shall happen to be made of or in payment of the said annuity or yearly sum of hundred pounds, hereby intended to be secured unto the said [*grantee*], his executors, administrators, and assigns, or some part thereof, at or on the days or times, and in manner limited and appointed for payment thereof as aforesaid. AND UPON FURTHER TRUST, that in case the said annuity or yearly sum of hundred pounds, or any part thereof, should happen to be behind and unpaid for the space of forty days next over or after any of the said days or times whereon the same is limited and appointed to be paid as aforesaid; then and in such case, and whenever the same shall happen, it shall and may be lawful to and for the said [*grantee*], his heirs and assigns; and he and they are hereby fully authorized, required, and empowered to sell, and absolutely dispose of all and every the said several pieces or parcels of land and hereditaments hereinbefore mentioned, and hereby covenanted to be surrendered, either together or in parcels, and either by public sale or private contract, unto any person or persons whomsoever, for the most money or best price or prices that can be reasonably had or gotten for the same; AND to execute and make all such deeds, conveyances, and assurances, of the said several pieces or parcels of land and hereditaments, to the purchaser or purchasers thereof, as shall be requisite or necessary for the completion of such sale or sales; AND to stand and be possessed of and inter-

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Declaration that grantee shall stand seised of premises upon trust to permit grantor to receive rents until default in payment.

And upon trust in default of payment for forty days, to sell premises, and to stand possessed of money arising from sale;

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ested in all and every the sum and sums of money, to arise and be produced from the sale or sales hereinbefore directed to be made, and of the rents, issues, and profits, of the said several pieces or parcels of land and hereditaments to arise and become payable after the same hereditaments shall become saleable, until the sale or sales thereof shall be completed; UPON TRUST thereout in the first place, to retain and reimburse himself and themselves all such costs, charges, and expences, as he or they shall or may sustain, expend, or be put unto, in or about the making and completing of such sale or sales, or otherwise in the execution of the trusts hereby in him and them reposed; AND after payment thereof, as to the surplus of the money arising from such sale or sales as aforesaid, UPON TRUST, by and out of the same, to retain and pay to him the said [*grantee*], his executors, administrators, or assigns, so much of the said annuity or yearly sum of hundred pounds, as at the time of completing such sale or sales, shall happen to be in arrear and unpaid; *and also* all such sum and sums of money, losses, costs, charges, damages, and expences, (if any) as the said [*grantee*], his executors, administrators, or assigns, or any of them, shall pay, sustain, or be put unto, by reason or means of the non-payment of the said annuity or yearly sum of hundred pounds, or any part thereof, [at or on the days and times, and in the manner hereinbefore mentioned or appointed for the payment thereof,] or otherwise however relating thereto. AND UPON FURTHER TRUST, to place out or invest the residue of the money to arise by such sale or sales, and of the rents, profits, and produce of the said several pieces or parcels of land and hereditaments, until such sale or sales shall be completed, upon government securities, at interest, in the name or names of him the said [*grantee*], his executors, administrators, or assigns. AND *it his hereby declared and agreed* by and between the said parties to these presents, that the said [*grantee*], his executors, administrators, and assigns, shall stand possessed of and be interested in the money so to be placed out and invested, UPON TRUST, by and out of the interest, dividends, and proceeds thereof, and if such yearly dividends, interest, and proceeds should be insufficient, then in addition thereto, by calling in, sell-

Upon trust to retain expences and arrears of annuity;

And to invest residue of money upon government securities;

And out of dividends or interest to pay annuity, and if interest not sufficient, then by selling part of principal;

ing, and disposing, from time to time, of a sufficient part of the principal money so to be invested, or the stocks, funds, or securities for the same, to retain and pay to himself and themselves the said annuity or yearly sum of hundred pounds, as and when the same shall become due and payable: AND UPON TRUST also, by and out of the money so to be placed out and invested, and the dividends, interest, and proceeds thereof, to retain to him the said [*grantee*], his executors, administrators, and assigns, all such costs, charges, and expences, as he or they may sustain, or be put unto, in the execution of the trusts hereby reposed in him and them, respecting the money hereinbefore directed to be invested or placed out at interest; AND subject to the trusts hereinbefore declared, concerning the money so to be invested or laid out at interest as hereinbefore mentioned, the same and the interest thereof, or so much thereof, and of the interest thereof, as shall not be applied in answering such trusts as are hereinbefore thereof declared, shall be IN TRUST for the said [*grantor*], his executors, administrators, and assigns, to and for his and their own absolute use and benefit. PROVIDED ALWAYS *and it is hereby declared and agreed* by and between the said parties to these presents, That after the decease of the survivor of them the said [*grantee* and *nominees*], and full payment unto the executors, administrators, or assigns of the said [*grantee*], of the said annuity or yearly sum of hundred pounds, and such proportional part thereof; and all costs, charges, damages, and expences, as aforesaid, the said several pieces or parcels of land and hereditaments hereby covenanted to be surrendered as aforesaid, or so much thereof (if any) as shall not be disposed of under or in pursuance of the trusts herein before declared or expressed, shall be IN TRUST for the said [*grantor*], his heirs and assigns for ever, and to be assigned and surrendered as he or they shall direct or appoint. PROVIDED ALSO, *and it is hereby further agreed and declared* by and between the said parties to these presents, that all and every the contracts, agreements, sales, dispositions, conveyances, surrenders, assurances, acts, deeds, matters, and things, which shall be entered into, made, done, or executed by the said [*grantee*], his heirs, or assigns, of or concerning the said several pieces or par-

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And subject thereto in trust for grantor.

Proviso, That after nominees' decease, and payment of all arrears of annuity and costs, premises covenanted to be surrendered, or so much as should not be sold under the trusts, shall be in trust for grantor, his heirs and assigns.

Declaration that the conveyances executed by grantee shall be effectual, although grantor should not join therein:

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cels of land and hereditaments hereby covenanted to be surrendered, or any part thereof, shall to all intents, constructions, and purposes, whatsoever, be as valid and effectual in the law, although the said [*grantor*], his heirs, or assigns, should not execute the same, or join therein, or assent thereto, as such contracts, agreements, sales, dispositions, conveyances, surrenders, assurances, acts, deeds, matters, and things, would have been, if the said [*grantor*] had duly executed the same, and joined therein, or assented thereto: [AND that the person or persons to whom the said [*grantee*], his heirs or assigns, shall convey, surrender, or otherwise dispose of, the said several pieces or parcels of land and hereditaments hereby covenanted to be surrendered, or any of them, or any part or parts thereof, shall, notwithstanding the said [*grantor*], his heirs or assigns, should not execute the same, or join therein, or assent thereto, be entitled to have, hold, and enjoy the same pieces or parcels of land, hereditaments, and premises, against the said [*grantor*], his heirs and assigns, and all and every person and persons claiming, or to claim, by, from, through, under, or in trust, for him, them, or any of them.]

and that the receipt of grantee for purchase money, shall be a sufficient discharge to purchaser.

PROVIDED ALSO, *and it is hereby further agreed and declared* by and between the said parties to these presents, that the receipt or receipts of the said [*grantee*], his heirs, executors, administrators, or assigns, shall, from time to time, be a good and sufficient discharge, or good and sufficient discharges, to the person or persons who shall pay the said rents and profits, or purchase money of the said pieces or parcels of land and hereditaments so to be sold as aforesaid, or any of them, or any part or parts thereof, and to his, her, and their, respective heirs, executors, administrators, and assigns, for so much of the rents and profits or purchase money as shall therein be acknowledged to be received; *And* that such person or persons, his, her, or their heirs, executors, or administrators, shall not afterwards be answerable or accountable for any loss, misapplication, or non-application, of such rents and profits or purchase money so received, or any part thereof, nor be obliged to inquire into the reason or necessity of receiving such rents and profits, or of making any such sale or sales.

And that grantee shall not be answerable for more money than comes to his hands.

PROVIDED ALSO, *and it is hereby further agreed and declared* by and between the said parties to these presents,

that the said [*grantee*], his heirs, executors, administrators, and assigns, shall not be charged or chargeable with or for any sum or sums of money, other than such as shall actually and respectively come to his or their hands, by virtue of these presents; *Nor* with or for any loss or damage which may happen in or about the execution of all or any of the trusts aforesaid, without his or their wilful default. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, by these presents, that he the said [*grantor*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns [for and during the natural lives of him the said [*grantee*] and the said [*nominees*], and the lives and life of the survivors and survivor of them,] the said annuity or yearly sum of pounds, and also such proportional part thereof as aforesaid, free from taxes, and clear of all other deductions whatsoever, at the days and times, and in manner and form expressed, limited, and appointed for payment thereof, in and by the said in part recited bond or writing obligatory. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby further covenant, promise, and agree to and with the said [*grantee*], his heirs and assigns, by these presents, in manner following, that is to say; That he the said [*grantor*], at the time of the sealing and delivery of these presents, [is and stands lawfully and rightfully seised of and in, or well entitled unto, the said several pieces or parcels of land and hereditaments hereby covenanted to be surrendered, of a good estate of inheritance in possession, according to the custom of the said manor, without any condition, trust, power of revocation, limitation of new or other use or uses, or any other restraint, matter, cause, or thing whatsoever, which can or may defeat, alter, change, charge, revoke, determine, make void, or incumber the same, or any part or parts thereof: AND ALSO that he the said [*grantor*]] hath in himself good right, full power, and lawful and absolute authority, to surrender all and singular the said several

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Covenant by grantor to pay annuity.

Covenant by grantor, that he is seised of the estate, according to the custom of the manor;

and hath good right to surrender same upon trusts declared;

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pieces or parcels of land and hereditaments hereinbefore covenanted to be surrendered as aforesaid, with the appurtenances, to the use of the said [*grantee*], his heirs and assigns for ever, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared of and concerning the same, and according to the true intent and meaning of these presents: AND FURTHER, that the said several pieces or parcels of land and hereditaments hereinbefore covenanted to be surrendered, shall and lawfully may from time to time and at all times hereafter, from and after default shall be made in payment of the said annuity or yearly sum of hundred pounds, remain, continue, and be, to the use of the said [*grantee*], his heirs and assigns, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared, of and concerning the same; AND shall and may be accordingly, peaceably, and quietly had, held, and enjoyed, without the lawful let, suit, hinderance, interruption, or denial, of him the said [*grantor*], his heirs and assigns, or any other person or persons whomsoever: AND free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise, by him the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against, all, and all manner of former and other gifts, grants, bargains, sales, mortgages, surrenders, jointures, free-bench, uses, entails, rents, arrears of rent, statutes, judgments, recognizances, titles, charges, and incumbrances whatsoever, had, made, done, or committed, or willingly suffered, by the said [*grantor*], or any other person and persons whomsoever: AND MOREOVER, that he the said [*grantor*] and his heirs, and all and every other person and persons whomsoever, having or lawfully claiming, or who shall or may hereafter have or lawfully claim, any estate, right, title, trust, or interest of, in, to, or out of, the said several pieces or parcels of land and hereditaments hereinbefore covenanted to be surrendered as aforesaid, or any of them, or any part thereof, shall and will from time to time, and at all times hereafter, upon every reasonable request of the said [*grantee*], his heirs, executors, administrators, or assigns, but at the proper costs and charges

and that on default in paying annuity, the premises shall remain to grantee, upon trusts declared;

free from incumbrances;

and for further assurance.

of the said [*grantor*], his heirs, executors, or administrators, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, deeds, conveyances, surrenders, and assurances in the law whatsoever, for further, better, more perfectly and absolutely, surrendering and assuring the said several pieces or parcels of land and hereditaments, hereinbefore covenanted to be surrendered, with their and every of their appurtenances, to the use of the said [*grantee*], his heirs and assigns, for ever, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared, of and concerning the same; As by the said [*grantee*], his heirs, executors, administrators, or assigns, or his or their counsel learned in the law, shall be reasonably advised, devised, and required. AND [WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of hundred pounds, it was agreed, that the said judgment so to be confessed upon the said bond, for the said sum of [*penalty of bond*] thousand pounds and costs, as aforesaid, should be entered on record in the said court of king's bench, as of this present Michaelmas term, Hilary term next ensuing, or some other subsequent term. Now] THIS INDENTURE FURTHER WITNESSETH, *And it is hereby declared and agreed*, by and between the said [*grantor*] and [*grantee*], that the said judgment upon the aforesaid bond shall be considered as a security only for the better and more effectually securing the payment of the said annuity or yearly sum of hundred pounds to the said [*grantee*], his executors, administrators, and assigns, during the natural lives of the said [*grantee*] and [*nominees*], and the lives and life of the survivors and survivor of them, at the several days and times, and in the manner limited and appointed for the payment thereof, in and by the said condition to the said recited bond, and of such proportional part thereof as aforesaid: AND that no execution or executions shall be issued or taken out upon the said judgment, unless and until the whole or a part of some quarterly payment of the said annuity or yearly sum of hundred

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Recital that judgment was to be entered on warrant of attorney.

Defeazance on judgment.

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pounds shall be in arrear for twenty-one days next after some or one of the days, or after the times in and by the condition to the said hereinbefore recited bond or obligation, limited and appointed for the payment thereof as aforesaid. PROVIDED ALWAYS, *and it is hereby declared and agreed* by and between the said [*grantor*] and [*grantee*], and the said [*grantor*], for himself, his heirs, executors, and administrators, *Doth* hereby covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that when and so often as the said annuity or yearly sum of hundred pounds, or any part thereof, or such proportional part thereof as aforesaid, shall be behind and unpaid by the space of twenty-one days next over or after any of the days or times mentioned or appointed for payment thereof in the condition to the said bond: that then and so often, and in every such case, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, to sue out such execution or executions upon or by virtue of the said judgment hereinbefore mentioned, as he or they shall think fit or be advised, for the recovery of the arrears of the said annuity or yearly sum of hundred pounds, and every part thereof; and all costs and charges which the said [*grantee*], his executors, administrators, or assigns, or any of them, shall bear, pay, sustain, or be put unto, for or by reason or means of the non-payment thereof; AND that it shall not be necessary for the said [*grantee*], his executors, administrators, or assigns, to revive or cause the said judgment to be revived, or do any act, matter, or thing, to keep the same on foot, notwithstanding the said judgment shall have been entered on record for the space of one year or upwards, and notwithstanding any rule or practice of the said Court of King's Bench to the contrary: AND that the said [*grantor*], his heirs, executors, or administrators, shall not nor will have, take, receive, or attempt, by any ways or means, to have or receive any advantage in consequence of not reviving or keeping the said judgment on foot. PROVIDED ALWAYS, *and it is hereby agreed and declared*, that from and after the decease of the survivor of them the said [*grantee*] and [*nominees*]; and full payment of all arrears

of the said annuity or yearly sum of hundred pounds, and such proportional part thereof as aforesaid, and all such costs, charges, damages, and expences as aforesaid, and all other costs, charges, damages, and expences in anywise relating to the said judgment and premises; he the said [*grantee*], his executors, administrators, or assigns, shall and will, at the request, and at the costs and charges of the heirs, executors, or administrators of the said [*grantor*], acknowledge satisfaction of the said judgment upon the record thereof. AND (*c*) [WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of hundred pounds hereinbefore mentioned, it was mutually agreed by and between the said [*grantor*] and [*grantee*], that the said [*grantor*], his heirs, executors, administrators, or assigns, should at any time hereafter, at his or their own pleasure, be at liberty to repurchase the said annuity or yearly sum of hundred pounds, upon giving unto the said [*grantee*], his executors, administrators, or assigns, seven days notice in writing of such his or their intention, and upon paying unto the said [*grantee*], his executors, administrators, or assigns, the full sum of thousand and hundred pounds of lawful money of Great Britain and Ireland, being the original purchase money and two quarterly payments of the said annuity of hundred pounds, as and for the consideration of such repurchase; together with all arrears that should be due on the same, and a proportional part thereof from the last day of payment preceding such repurchase, up to and including the day of repurchasing the same. Now] THIS INDENTURE FURTHER WITNESSETH, that [for effectuating the said last-mentioned agreement, and] for the considerations aforesaid, *it is hereby declared and agreed* by and between the parties to these presents, to be the true intent and meaning of these presents, and of the said parties; AND the said [*grantee*], for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree with and to the said [*grantor*], his heirs, executors, and administrators, and every of them, that in

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Recital of agreement for repurchase on paying half a year's annuity.

Declaration of agreement for repurchase on paying half a year's annuity.

(*c*) If the annuity be repurchasable by one payment, or by instalments, *vide ante*, 468.

REPURCHASABLE BY INSTALMENTS.

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case the said [*grantor*], his heirs, executors, administrators, or assigns, should at any time hereafter be minded and desirous of repurchasing the said annuity or yearly sum of hundred pounds, and of such his or their intention should give unto the said [*grantee*], his executors, administrators, or assigns, seven days notice in writing, that he the said [*grantee*], his executors, administrators, or assigns, shall and will, at the expiration of seven days from the time such notice shall be given as last aforesaid, on receiving all sums of money whatsoever which shall be then due on the arrears of the said annuity of hundred pounds, together with a proportional part thereof from the last day of payment thereof preceding such repurchase, up to and including the day of repurchasing the same as aforesaid, accept, receive, and take the said sum of thousand and hundred pounds, as in full for the repurchase of the said annuity or yearly sum of hundred pounds, secured as aforesaid; AND on receipt of the said sum of thousand and hundred pounds, and all arrears of the said annuity or clear yearly sum of hundred pounds, secured as aforesaid, and such proportional part thereof as aforesaid, shall and will, at the proper costs and charges in the law of him the said [*grantor*], his heirs, executors, administrators, or assigns, deliver the said bond to the said [*grantor*], his heirs, executors, administrators, or assigns, to be cancelled; *and* acknowledge, or cause satisfaction to be acknowledged, on the record of the judgment which shall be entered up by virtue of the said warrant of attorney; AND then and in such case the said annuity or yearly sum of hundred pounds, and the trusts herein contained for securing the payment thereof, shall cease, determine, and be void; AND then and in such case the said [*grantee*], his heirs, or assigns, shall and will, at the request, costs, and charges of the said [*grantor*], his heirs or assigns, acknowledge or cause to be acknowledged upon the court rolls of the said manor of to have received full satisfaction, according to the form and effect of the said surrender; or otherwise surrender the said several pieces or parcels of land and hereditaments hereinbefore covenanted to be surrendered, or

On repurchasing annuity, grantee to acknowledge satisfaction on court rolls, or surrender premises, or such part as shall not be sold under trusts, unto grantor or his heirs; and if any part be sold, and produce invested in the funds, to transfer securities to grant-

so much thereof as shall not then have been sold and disposed of under the trusts hereinbefore declared, unto the said [*grantor*], his heirs or assigns; or as he or they shall direct or appoint; AND THEN also and in that case, if the same hereditaments, or any part thereof, should have been sold and disposed of, and the produce thereof invested upon government securities at interest, shall and will transfer such government securities as may then remain unapplied and undisposed of for the purposes aforesaid, unto the said [*grantor*], his executors, administrators, or assigns; any thing herein contained to the contrary thereof in any wise notwithstanding. IN WITNESS, &c.

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or, or his executors.

COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

Covenant to pay an Annuity, for the Grantee's Life, collaterally secured by a previous Surrender of Copyhold Premises, and a Bond and Warrant of Attorney to confess Judgment thereon; where the Consideration Money is paid by a Bill of Exchange,

THIS INDENTURE, made the day of in the year of the reign of our Sovereign Lord *George* the *fourth*, by the grace of God of the united kingdom of Great Britain and Ireland king, defender of the faith, and in the year of our Lord, 18 ; BETWEEN [*grantor*], of in the county of , of the one part, and [*grantee*], of in the county of , of the other part. WHEREAS the said [*grantee*], hath contracted and agreed with the said [*grantor*], for the purchase of one annuity or yearly sum of pounds, to be paid, free from taxes, and clear of all other deductions whatsoever, to the said [*grantee*], his executors, administrators, and assigns, for and during the term of the natural life of the said [*grantee*], at or for the price or sum of hundred pounds: [(*a*) AND upon the treaty for such purchase it was agreed, that all costs and charges attending the said contract, and for preparing and perfecting the several securities hereinafter mentioned, and for preparing and inrolling a memorial thereof, should be borne and paid by the said [*grantor*].] AND WHEREAS (*b*) at a special court (*or* court ba-

Parties.

Recital of contract for annuity for grantee's life.

Securities to be perfected at grantor's expence.

Recital of previous surrender of copyhold.

(*a*) *Vide ante*, 460 (*b*).

SURRENDER OUT OF COURT.

(*b*) If the surrender were made out of Court to two customary tenants of the manor, say,

"AND WHEREAS the said [*grantor*] hath, on the day of the date of these presents, surrendered by the rod, into the hands of the lord of the manor of , in the county of , by the hands and acceptance of [*copyholders*], two of the customary tenants of the said manor, ALL THOSE, &c." *ut supra.*

ron) held (in and) for the manor of in the county of , on the day of the date of these presents, (*or* on the day of (*c*) last past,) the said [*grantor*],

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(*c*) When copyhold premises are intended as a security for an annuity, sometimes a previous surrender is made on condition, as in the above form, with trusts for sale, &c. on default in payment; and sometimes a covenant is entered into, to make a subsequent surrender on the same condition and trusts, *ut ante*, 550: but it is generally prudent to have the surrender actually made before the consideration money is paid: and when from circumstances, that cannot be previously accomplished, it should be done as soon after as possible; but more especially where the annuity is granted for the life of the grantee or of a nominee; for, in case of the grantor's death, before making the surrender, much trouble and inconvenience may be experienced, in procuring it to be made, in consequence of the infancy or obstinancy of his customary heir.

Practice as to copyhold securities for annuities.

The usual proviso or condition, making the surrender void on the due payment of the annuity, and also the trusts for sale, &c. should always immediately follow the surrender, and be carefully inserted in the court rolls. The condition and trusts are, however, often contained in the deed of covenant, without being mentioned on the court rolls; but this mode should never be adopted when it is possible to be avoided: for, the surrender being absolute on the rolls, should the defeazance be lost, the proof of the condition and trusts may be difficult, and frequently impossible, because the form of the memorial required by the present annuity act does not disclose these circumstances, and copyholds are not within the acts for registering deeds, &c. in Middlesex and Yorkshire. Besides, the title to copyhold lands should always appear on the court rolls of the manor, and not be dependent on any private deeds, or agreements; and even if a defeazance be made by a separate deed, it should always be entered on the rolls; because the lord, by consenting to a condition or trust on the court roll, in case of escheat, &c. he is bound by the condition or trust as he cannot claim against his own act. [Watk. Cop.] [117]. *Burgess* v. *Wheate*, 1 Wm. Blacks. Rep. 167, 1 Eden, 232. S. C. *Stockdale* v. the *South Sea Company*, 2 Atk. 141. *Peachy* v. Duke of *Somerset*, Prec. Chan. 573. Vide 5 Cru. Dig. 581. s. 78. 2d. ed.

Condition and trusts should be inserted on court rolls.

As well in the case of a conditional as of an absolute surrender, the surrenderor remains tenant to the lord until the admission of the surrenderee; so much so, that prior to 55 Geo. III. c. 192. the surrenderor could not, after the conditional surrender, and *before*

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the admission of the surrenderee, devise the copyholds without a previous surrender to the use of his will. *Kenebel* v. *Scrafton*, 8 Ves. 30. *Doe* v. *Wroot*, 5 East, 130. Coote, Mortg. 111. And if the surrenderor die before the admittance of the surrenderee, the surrenderor will die *tenant to the lord;* and, consequently, an heriot will be due on his death: 1 Watk. Cop. 147. *Doe* v. *Tofield*, 11 East, 246. For the same reason, no heriot will be due on the death of the surrenderee before his admission. So if a copyholder *covenant* to surrender, and before a surrender be made the covenantee assign his interest, one fine only will be due on the assignee's admission, because the covenantee never was tenant to the lord; and the lord will be obliged to admit the assignee accordingly The *King* v. the Lord of the manor of *Hendon*, 2 Durnf. and East, 484. 1 Watk. Cop. 103, 294.

Surrenderor continues tenant until surrenderee's admittance.

Fine due on surrenderor's death before surrenderee's admittance.

One fine only due on admission of assignee of covenantee.

A surrenderee not being tenant until admittance, he cannot in the mean time pass the lands, by surrender, although he may make an equitable transfer of them. *Doe* v. *Tofield*, 11 East, 246. He may also devise the lands, and they will pass in equity; *Davie* v. *Beversham*, 3 Ch. Rep. 4; but the devisee, will not be entitled to admission as legal tenant, for a legal devise of copyholds cannot be made before admittance; and therefore, although the devisee be admitted, the surrenderor or his heir will still remain tenant to the lord. But equity will consider the legal tenant to be a trustee for the devisee. The proper course to be pursued probably would be for the heir of the surrenderee to be admitted, and to make a surrender to the devisee. In *Doe* dem. *Vernon* v. *Vernon*, 7 East, 8, it was held that a devisee who had been admitted, of a devisee who had not been admitted, could not maintain an ejectment at law: because if he had any title it was in equity. Coote, Mortg. 114.

Surrenderee may in equity, before admittance, assign or devise copyholds.

On performance of condition, surrenderor may re-enter.

Whether the surrenderee has been admitted or not, if the condition be performed according to the terms of the surrender, the surrenderor may re-enter without a new admittance, and he will be in of his old estate. Gilb. Ten 276. *Simonds* v. *Lawnd*, Cro. Eliz. 239. In all cases, however, when the purposes for which the conditional surrender was made have been answered, in order to clear the title, it is usual for the conditional surrenderee to acknowledge satisfaction, and authorise the steward to vacate the surrender; which acknowledgment of satisfaction the warrant to vacate, and the actual vacation of the surrender, are then entered on the rolls. 1 Watk. Cop. 116, 186, 213.

Surrenderee not usually admitted until default in payment.

On a conditional surrender for securing an annuity, it is not usual for the surrenderee to be admitted until default has been made in payment, in order to avoid the fees for admission and performance of the

customary services; and unless there be a special custom in the manor, by which the lord may compel a surrenderee to be admitted, he cannot, it seems, compel the surrenderee's admission, even after condition broken; *Basspool* v. *Long*, 1 Roll. Abr. 568. pl. 6, 7 Vin. Abr. 171. pl. 5. Cro. Eliz. 879. 1 Show. 30, 83. *King* v. *Dilliston*, 1 Salk. 386. Carth. 41. Prec. in Chan. 573; but if there be such a custom, it seems he may compel him, and a court of equity will not give relief. *Tredway* v. *Fotherley*, 2 Vern. 567.

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If the surrenderee be admitted, and the condition be broken by non-payment of the annuity, his estate will be absolute: and to reconvey the legal estate to the grantor of the annuity, a resurrender, a readmission, and a fine will be necessary: Gilb. Ten. 276, and the grantor will thereupon gain a new estate by purchase, and the descent be altered; so that if the lands had originally descended to him *ex parte materná*, they will afterwards descend *ex parte paternâ*. *Benson* v. *Scott*, 12 Mod. 49. *Hannam* v. *Morgan*, 7 Term Rep. 103. Scriv. Cop. 245, 2d ed.

After the conditional surrenderee has been admitted, he becomes tenant to the lord, and the surrenderor may, before the condition be broken, release by deed to him the benefit of the condition, or make an absolute surrender to him: and after the condition be broken he may release the ulterior trusts for his benefit, or the equity of redemption in case of a mortgage; after admittance of the surrenderee, the equitable interest of the surrenderor cannot properly be extinguished by a surrender, although such surrender would probably be held to operate as a release: in either of these cases, the conditional surrenderee being already in possession, and having paid his fine for admission, no additional fine to the lord on the surrenderor's release would be due. *Kite* v. *Queinton*, 4 Co. 25. *Hull* v. *Sharbrook*, Cro. Jac. 36. Hal. MS. n. Co. Litt. 59. a. (2).

Surrenderor may release the condition and trusts to surrenderee by deed.

Before the surrenderee can recover the possession in ejectment, he must be admitted; but he may recover upon a demise laid between the date of the surrender, and admittance; the title of the surrenderee, after admittance, is perfect *from the time of the surrender*, and relates back to it, as against all persons, besides the lord; 1 Term Rep. 601. [7 East, 8.]; and it is sufficient if the lessor of the plaintiff be admitted at any time before the trial; for the admittance is only a circumstance required by law merely for the sake of the lord; *Benson* v. *Scott*, 1 Salk. 185. *Roe* v. *Hicks*, 2 Wils. 15. *Vaughan* v. *Atkins*, 5 Burr. 2786. *Doe* v. *Bennington*, 16 East, 208. [*Holdfast* v. *Clapham*, 1 Term Rep. 600.] And the surrenderee may recover the mesne profits from the surrenderor when he is the defendant in ejectment from the time of the sur-

Surrenderee must be admitted before he can recover in ejectment.

Action for mesne profits.

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surrendered by the rod, into the hands of the lord, according to the custom of the said manor, ALL *those* several pieces or parcels of land, situate, lying, and being at , within the said manor, and containing by estimation, &c. with their rights, members, and appurtenances; *And* all other the lands, tenements, and hereditaments whatsoever of him the said [*grantor*], holden of the said manor by copy of court roll; *To the use* of the said [*grantee*], his heirs, and assigns for ever, according to the custom of the said manor; *On Condition* that if the said [*grantor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*grantee*], or his assigns, for and during the natural life of him the said [*grantee*], *One* annuity or yearly sum of pounds of lawful money of Great Britain and Ireland, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say; on the day of , the day of , the day of , and the day of , in every year, by even and equal portions; the first payment thereof to begin and be made on the day of next ensuing the date thereof: *And also* if the said [*grantor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the executors, administrators, or as-

Parcels.

To the use of grantee.

On condition to be void on paying

annuity for grantee's life,

with proportional part to his death,

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render, on the equitable principle that the surrenderor is considered as a trustee for the surrenderee; *Holdfast* v. *Clapham*, 1 Term Rep. 600. *Roe* v. *Hicks*, 2 Wils. 15. So the grantee of an annuity, after a recovery in ejectment, against a tenant in possession under a demise from year to year, and after giving notice to the tenant of his title, and requiring him to attorn and to pay the rent remaining in his hands, may maintain an action for use and occupation against the tenant for all rent in his hands at the time of the notice, and down to the day of the demise in the ejectment; but not afterwards. *Birch* v. *Wight*, 1 Term Rep. 378. [But an admittance is only necessary to perfect the legal title, where a surrender of the previous estate is necessary, but not where the estate is already in the lord, and he makes an original grant in the first instance. Where, therefore, a grant was made by the lord of a reversion, it was held that the grantee might maintain an action of ejectment without admittance. *Roe* v. *Lovelass*, 2 B. and A. 453. *Ed.*]

Admittance not neceesary, when.

signs of the said [*grantee*], in case the said [*grantee*] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of pounds should become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum of pounds should have become due, then a proportional part of the quarterly payment of the said annuity or yearly sum of pounds, to be computed from the day of the date of the said surrender to the day of the death of the said [*grantee*]; *But* in case any quarterly payment of such annuity or yearly sum of pounds, should have become due at the time of the decease of the said [*grantee*], then from such of the said quarterly days of payment of the said annuity or yearly sum of pounds, as should happen to be next and immediately preceding the day of the death of the said [*grantee*] to the day of his decease: *Or* if the said [*grantor*], his heirs, executors, administrators, or assigns, should re-purchase the said annuity or yearly sum of pounds, upon the terms and conditions therein and hereinafter mentioned, *Then* and in either of the said cases the said surrender should be void. AND WHEREAS the said [*grantor*] hath by his bond or obligation in writing under his hand and seal, bearing even date with these presents, become bound unto the said [*grantee*] in the sum of [*double the purchase money*]; *With a Condition* thereunder written for making the same void, if the said [*grantor*], his heirs, executors, administrators, or assigns, should well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of pounds, in manner therein and in the said recited surrender mentioned and appointed for payment thereof; *Or* [if the said [*grantor*], his heirs, executors, administrators, or assigns,] should re-purchase the said annuity or yearly sum of pounds, upon the terms and conditions therein and hereinafter mentioned. AND WHEREAS the said [*grantor*] hath executed a warrant of attorney, bearing even date with these presents, authorising and empowering certain attornies therein named, to confess a judgment

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or on repurchase.

Recital of bond.

With condition to be void on paying annuity,

or on repurchase.

Recital of warrant of attorney.

COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

against him in his Majesty's Court of King's Bench at Westminster, in an action of debt upon the said bond, at the suit of the said [*grantee*], for the said sum of [*penalty of bond*] pounds, and costs of suit. Now THIS INDENTURE WITNESSETH, that in consideration of the sum of hundred pounds of lawful money of Great Britain and Ireland, to the said [*grantor*] in hand well and truly paid by the said [*grantee*], at or before the sealing and delivery of these presents, in manner following, that is to say; by a bill of exchange (*d*), bearing date the day of instant, drawn by the said [*grantee*] upon, and accepted by [*acceptor*], for the said sum of hundred pounds, payable to the said [*grantee*], or order, months after the date thereof, and by the said [*grantee*] indorsed to the said [*grantor*]; *And also* the sum of pounds shillings and pence, being lawful interest on the said bill of exchange, from the day of the date of these presents, until the day of actual payment thereof; the receipt of which said sum of hundred pounds, he the said [*grantor*] doth hereby acknowledge, and of and from the same sum, and every part thereof, doth hereby acquit, release, and for ever discharge, the said [*grantee*], his executors, administrators, and assigns, *He* the said [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said

Testatum.

Consideration paid by a bill of exchange.

Covenant to pay annuity.

Payment of consideration in bills of exchange should be avoided if possible.

(*d*) If the consideration, or any part of it, be paid in notes, and any of the notes, with the privity and consent of the person advancing the same, shall not be paid when due, or shall be cancelled or destroyed without being first paid, the grantee may be prevented from recovering the annuity. 53 Geo. III. c. 141. s. VI. *ante*, 333.

In cases of this kind, which are of very rare occurrence, it is usual for the grantee to pay the grantor interest at five per cent. on the bill until it becomes due; but that is not an adequate remuneration for the delay in the actual payment of the consideration money, in those cases where the annuity commences from the date of the security, because the growing payments on the annuity are oftentimes more than double that rate of interest. In short, the consideration should never be paid in that manner if it can be possibly avoided; for although such a mode of payment is strictly legal, in a *boná fide* transaction, yet it is always looked on with suspicion.

[*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, [some or one of them,] shall and will from time to time well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of pounds, and also such proportional part thereof as aforesaid, free from taxes, and clear of all other deductions whatsoever, at the days and times, and in manner and form hereinbefore mentioned and expressed for payment thereof, and acccording to the true intent and meaning of these presents. AND *it is hereby declared and agreed* by and between the said parties to these presents, that the said [*grantee*], his heirs and assigns, shall stand seised and possessed of the said several pieces or parcels of land and hereditaments, UPON THE TRUSTS, and to and for the intents and purposes, and with, under, and subject to, the powers, provisoes, declarations, and agreements, hereinafter mentioned, expressed, and declared, of and concerning the same, that is to say; (*Add trusts for grantor until default in payment; and on default in payment, trusts for sale, &c. ut ante,* 551 to 555.) (*e*) AND THE SAID [*grantor*], for himself, his heirs, executors,

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Declaration of trust of copyhold premises previously surrendered to the grantee's use.

Covenant that grantor was

(*e*) Under trusts for sale similar to those above referred to, the owner is usually required to join in the conveyance, which he is generally unwilling to do, his object being to prevent a sale; Sug. Vend. 301, 5th ed. [326. 7th ed.] and it was formerly thought that the case of *Croft* v. *Powell*, Comyn's Rep. 603, authorised a purchaser to insist on his concurrence; Pow. Mortg. 14. 4th ed. but that case was no authority for such a conclusion, as the court, on the contrary, clearly admitted that the mortgagee had a power, on nonpayment of the money within the time limited, to mortgage or sell the estate in order to raise the money lent, being accountable for the overplus to the mortgager; 607, 608: the real question was, whether it was a sale of the lands discharged from the equity of redemption, or a transfer of the mortgage; and it was clearly held to be a transfer. See also 5 Bac. Abr. 7. Gwill. ed.

Under the authority of the following cases, no doubt is now entertained of the competency of trustees for sale to confer a good title to a purchaser, as far as the right to sell is communicated to them by the trust deed. 3 Pres. Abs. 289.

Under trusts for sale, the trustee can convey a good title to the purchaser, without the concurrence of the owner.

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Bill for specific performance *by* purchaser under a power of sale in a mortgage deed, dismissed with costs, so far as related to the joining of the mortgagor in the purchase deed.

In *Clay* v. *Sharpe* in Chancery, March 1802. Reg. B. A. fol. 66; 18 Ves. 346; 2 Cru. Dig. 105, 2d. ed. Sug. Vend. Appendix, No. XIV, page 20, 5th ed. [788 7th. ed.] the circumstances were as follows;

By indenture, bearing date the 28th of November, 1798, and made between *Thomas Wardell* of the first part, *George Taylor* and *Ann* his wife of the second part, *E. Day* of the third part, and *William Sharpe* of the fourth part, certain leasehold estates were assigned unto the said *Edward Day*, his executors, administrators, and assigns, subject to a proviso or condition for redemption, upon *Wardell's* transferring into the name of *Day*, his executors, administrators, or assigns, 2,000*l.* 3 per cent. consolidated bank annuities. And it was by the indenture agreed, that if default should be made contrary to the proviso or condition of redemption, it should be lawful for the said defendant *Edward Day*, to sell the said leasehold premises for the best price that could be reasonably gotten for the same; and to reimburse himself the costs, charges, and expences, relating to such sale; and afterwards to repurchase the said 2,000*l.* 3 per cent. consolidated bank annuities, or such part thereof as should remain due, or untransferred; and the overplus of the monies to arise by the said sale, if any, to pay to the said *Thomas Wardell*, his executors, administrators, or assigns. And the said *Thomas Wardell* did, by the said indenture covenant, that in case of any sale pursuant to the power aforesaid, he the said *Thomas Wardell*, his executors, or administrators, would join and concur therein, and execute any assignment to the purchaser or purchasers of the said premises, with the usual covenants for the title thereto; or do any reasonable act confirming such sale. But that nevertheless it should not be necessary that the joining of the said *Thomas Wardell* in any such sale or conveyance, should be essential to perfect the title, the same being intended only for satisfaction of such purchaser or purchasers.

Default was made in transferring the stock, and *Day*, who was a trustee, by *Sharpe's* directions, put up the premises for sale by public auction, at which sale the plaintiff became the purchaser.

The plaintiff's attorney prepared a draft of the assignment, in which he made *Day* the mortgagee, *Sharpe* the *cestui que trust*, and *Wardell* the mortgagor parties; but *Wardell* the mortgagor having refused to execute the assignment, the plaintiff filed his bill against *Day*, *Sharpe*, and *Wardell*, for a specific performance of the contract for sale.

To this bill the defendants put in their answers, and *Wardell* stated that he resisted the sale, as having been made without his consent, and at and under value; but before any proceedings were had *Wardell* be-

came a bankrupt, and in consequence thereof, a supplemental bill was filed against his assignees.

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The cause coming on to be heard the 15th of November, 1802, the Chancellor decreed that the plaintiff's bills should be dismissed as against the defendants, *Thomas Wardell*, and his assignees, *with costs*, to be taxed by the master. And it was also decreed, that the agreement entered into by the plaintiff with the defendants *William Sharpe* and *Edward Day*, for the purchase of the premises in question, should be carried into execution. And that upon the plaintiffs paying unto the said defendants *William Sharpe* and *Edward Day*, the residue of the purchase money for the premises, the said defendants should execute an assignment of the lease of the said premises to the plaintiff, or as he should appoint. And that the defendants *Sharpe* and *Day* should pay to the plaintiff his costs of the said suit, so far as the bills were not dismissed, as therein before directed, to be taxed by the master, in case the parties differed about the same.

Specific performance decreed *against* a purchaser under a power of sale in a mortgage deed without the mortgagor's concurrence, though he covenanted to join in a sale, without costs, the only authority produced not being in print.

So, in *Corder* v. *Morgan*, 18 Ves. 344, November 1811, by indentures, dated the 8th of February, 1804, *William Restorick* conveyed to the plaintiff, his heirs and assigns, subject to the mortgage to *Thomas Beed* for 500*l.* and also subject to redemption on payment of the sum of 500*l.* due to the plaintiff, with interest, on the 8th of June next, and of such other sums as should, before redemption of the premises, become due to the plaintiff from *Restorick*, for money advanced or paid by the plaintiff, &c. and it was declared, that in case default should be made by *Restorick* in payment of the said sum of 500*l.* then actually due, or such sums as should after become due from him to the plaintiff, or interest, by fourteen days after payment required, it should be lawful for the plaintiff, and he was thereby expressly required of his own proper authority, and without any farther authority or direction from the said *William Restorick*, his heirs, executors, administrators, or assigns, to make sale and dispose of the said hereditaments and premises thereby released, and every part thereof, either absolutely or conditionally, and by way of mortgage; or to demise and lease the same, or any part or parts thereof, for any term or number of years, at such rents or rent as he should think proper; such sale or sales to be either together or in parcels, by public auction or private contract, for the best price that could or might be reasonably had for the same; and such mortgage or mortgages, lease or leases, to be made of the whole or any part thereof to any person or persons who should be willing to purchase the same, or to take a mortgage or mortgages, lease or leases thereof, who having paid his, her, or their, purchase, mortgage, pre-

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mium, or other consideration money or monies, and having obtained a receipt or receipts for the same from the plaintiff, his heirs, executors, or administrators, should be by such receipt or receipts freely and absolutely discharged from such purchase money, &c. and such purchaser, mortgagee, lessee, &c. should not be obliged to see to the application, or be answerable for the misapplication or non-application of the money; and the money arising by the sale should be applied first to the expences of the sale, next to the mortgage to *Beed*, unless the sale should be subject to that mortgage; and after payment thereof, or subject thereto, in payment of the plaintiff, and then the residue of the monies so to arise are to be paid to the said *William Restorick*, his executors, administrators, or assigns; and it was covenanted and agreed, that in case the said hereditaments and premises should be sold, he the said *William Restorick*, his heirs or assigns, would join in such sale, and execute the several conveyances of the premises to be sold to the use of the purchaser, his heirs or assigns: nevertheless it was declared that the joining of the said *William Restorick*, his heirs or assigns, in any such sale, should not in any wise be deemed essential or necessary to perfect the title of the purchaser or purchasers, the same being intended for the further satisfaction of such purchaser or purchasers.

The plaintiff took an assignment of *Beed*'s mortgage, and having given the proper notice, agreed to sell the premises to the defendant for 945*l.*; and the bill prayed a specific performance of that agreement.

The defendant by his answer submitted, that the plaintiff was bound to procure *Restorick*, and the assignees, under a commission of bankruptcy against him, to join in the conveyance, as the plaintiff undertook to make out a proper title to the premises by good conveyances and assurances in the law, to convey a good and indefeasible estate of inheritance in fee-simple.

Sir *Samuel Romilly* and Mr. *Spranger*, for the plaintiff, contended that this title is under the power of sale in the mortgage deed, perfectly free from objection; and the case of *Clay* v. *Sharpe* was produced from the register's book.

Mr. *Joseph Martin* for the defendant.

The undertaking of the mortgagor in the mortgage deed, that he will, for the further satisfaction of the purchaser, join in the sale, authorized by that deed, entitles the defendant to have him a party to the conveyance. In *Croft* v. *Powel*, it is said, upon a case similar to this, that a purchaser would insist upon the mortgagor's joining in the conveyance; Com. 603; see Argu. 608; and in *The King* v. *The In-*

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habitants of Edington, 1 East, 288, Lord *Kenyon* intimates, that a court of equity would contro a power given to a mortgagee to sell the mortgaged premises.*

Sir *Samuel Rommilly*, in reply, suggested, that something material was probably omitted in the note of Lord Kenyon's observation, taken by a gentleman not practising in courts of equity; and distinguished *Croft* v. *Powell*, where the power of sale was by a defeazance.

The Master of the Rolls said, that when the cause was opened, he was unable to suggest any principle on which the defendant could properly insist on the mortgagor's being a party to the conveyance. His opinion was, that the clause in the mortgage deed relied on for the defendant, empowering the plaintiff to sell, whereby the mortgagor undertook to join in the conveyance, was a mere contract between the mortgagor and mortgagee, to the benefit of which the defendant, as a purchaser, was not entitled; and there was nothing in the nature of the contract between the plaintiff and his mortgagor, which prevented the latter giving, and the former exercising, such a power of sale of the premises as that, upon which this question arose. The case of *Clay* v. *Sharpe*, cited by Sir Samuel Romilly, is an authority precisely applicable to this case.

A specific performance was decreed, according to the prayer of the bill: but the *Master of the Rolls* said, he did not think it a case for costs; as the case of *Clay* v. *Sharpe* was not in print.

These decisions have established, that the concurrence of the owner of the estate cannot be required by a purchaser, although there be an express covenant on his part to join in the sale; and that a bill, filed by a purchaser to compel the owner to concur in the conveyance, will be dismissed with costs. And it may also be concluded from the case of *Corder* v. *Morgan*, that if a purchaser should hereafter refuse to complete his sale, by reason of the owner of the estate not concurring in it, and a bill be filed against him by the trustee for sale, for specific performance, it will be decreed against him, *with costs*. Coote, Mortg. 155.

Stabback v. *Leat*, Cooper's Rep. 46. does not in the least affect the above question.

On a mortgage with trusts for sale, trustee must reconvey on payment of the money due.

* His lordship's words were as follows:—In mortgage deeds there is sometimes introduced a clause, that the mortgagee may repay himself by sale of the mortgaged premises without the concurrence of the mortgagor: but a court of equity would, I believe, controul the exercise of that power. I am sure they would controul it in an instance like the present, *upon payment of what was due.* The trustee in such a case would be bound to execute a reconveyance; and here there is an express clause to that purpose. 1 East, 292.

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and administrators, doth hereby further covenant, promise, and agree, to and with the said [*grantee*], his heirs and assigns, by these presents, in manner following, that is to say; That he the said [*grantor*] was, at the time of making the said surrender, lawfully and rightfully seised of and in, or well entitled unto the said several pieces or parcels of land, hereditaments, and premises, thereby surrendered, of a good estate of inheritance in possession, according to the custom of the said manor, without any condition, trust, power of revocation, limitation of new or other use or uses, or any other restraint, matter, cause, or thing whatsoever, which could or might defeat, alter, change, charge, revoke, determine, make void, or incumber the same, or any part or parts thereof: AND ALSO that he the said [*grantor*] had in himself good right, full power, and lawful and absolute authority, to surrender all and singular the said several pieces or parcels of land, hereditaments, and premises, so surrendered as aforesaid, with the appurtenances, to the use of the said [*grantee*], his heirs and assigns for ever, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared of and concerning the same, according to the true intent and meaning of these presents: AND FURTHER, that the said several pieces or parcels of land, hereditaments, and premises, shall and lawfully may from time to time and at all times hereafter, from and after default shall be made in payment of the said annuity, remain, continue, and be, to the use of the said [*grantee*], his heirs and assigns, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared, of and concerning the same, and shall and may be accordingly, peaceably and quietly had, held, and enjoyed, without the lawful let, suit, hinderance, interruption, or denial, of him the said [*grantor*], his heirs or assigns, or any other person or persons whomsoever; AND free and clear and freely and clearly acquitted, exonerated, and discharged, or otherwise, by him the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against, all and all manner of former and other gifts, grants, bargains, sales, mortgages, surrenders, jointures,

seised of the estate, according to the custom of the manor.

And had good right to surrender.

And in default in paying annuity, premises to remain to grantee upon the trusts declared free from incumbrances.

free-bench, uses, entails, rents, arrears of rent, statutes, judgments, recognizances, titles, charges, and incumbrances whatsoever, had, made, done, or committed, or willingly suffered by the said [*grantor*], or any other person or persons whomsoever: AND MOREOVER, That he the said [*grantor*] and his heirs, and all and every other person and persons whomsoever, having or lawfully claiming, or who shall or may hereafter have, or lawfully claim any estate, right, title, trust, or interest, of, in, to, or out of, the said several pieces or parcels of land, hereditaments, and premises hereinbefore covenanted to be surrendered as aforesaid, or any of them, or any part thereof, shall and will from time to time, and at all times hereafter, at and upon the reasonable request of the said [*grantee*], his heirs, executors, administrators, or assigns, but at the proper costs and charges of the said [*grantor*], his heirs, executors, or administrators, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, things, conveyances, surrenders, and assurances in the law whatsoever, for further, better, more perfectly, and absolutely surrendering and assuring the said several pieces or parcels of land, hereditaments, and premises, with their and every of their rights, members, and appurtenances, to the use of the said [*grantee*], his heirs and assigns for ever, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared of and concerning the same, *As*, by the said [*grantee*], his heirs, executors, administrators, or assigns, or his or their counsel learned in the law, shall be reasonably devised or advised and required. *(Add defeazance on the judgment,* ut ante, 557; *and power to repurchase,* ut ante, 543 *or* 559.) IN WITNESS, &c.

COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

And for further assurance.

COVENANT TO SURRENDER WIFE'S COPYHOLD OF INHERITANCE, AS A COLLATERAL SECURITY.

COVENANT *by the Grantor of an* ANNUITY *for the Lives of three Nominees, that he and his* WIFE *will* SURRENDER *her* COPYHOLD *Estate of Inheritance, as a collateral Security, Upon Trusts for Sale, &c. with the ultimate Trust for the Wife and her Heirs.*

THIS INDENTURE, made the day of , in the year, &c. *George* the *fourth*, &c. and in the year of our Lord 18 ; BETWEEN [*grantor*], of, &c. and [ ] his wife, of the one part, and [*grantee*], of, &c. of the other part. WHEREAS the said [*grantor*] and [ ] his wife, in the right of the said [ ], are seised of or well entitled to the inheritance in possession, according to the custom of the manor of , in the county of aforesaid, of and in the several messuages, tenements, cottages, lands, hereditaments, and premises hereinafter covenanted to be surrendered. AND WHEREAS the [*grantee*] hath contracted and agreed with the said [*grantor*], for the purchase of one annuity or yearly sum of pounds of lawful money of Great Britain, and Ireland, to be paid to the said [*grantee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during the natural lives of [*nominees*], of, &c. and the lives and life of the survivors and survivor of them, at or for the price or sum of pounds: AND upon the treaty for the purchase of the said annuity or yearly sum of pounds,

Parties.

Recital of seisin in fee of customary lands in right of wife.

Recital of contract

for annuity for the lives of three nominees.

To be secured by grantor's bond; warrant

it was agreed that the same annuity should be secured by the bond or obligation of the said [*grantor*], and a warrant of attorney for entering up judgment thereon, and by the covenant of the said [*grantor*], and by a surrender of the said several copyhold hereditaments and premises, upon the condition and trusts hereinafter mentioned: [AND (*a*) it was also agreed that all costs, charges, and expences attending the said contract, and for preparing and perfecting the several securities for the said annuity, and for making and perfecting the said surrender, and also for preparing and inrolling a memorial thereof, should be borne and paid by the said [*grantor*].] (*Recite bond of the grantor for paying the annuity; And warrant of attorney to confess judgment,* ut ante, 548, 549.) NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of hundred pounds of lawful money of Great Britain and Ireland, by the said [*grantee*] to the said [*grantor*] in hand well and truly paid, at or immediately before the sealing and delivery of these presents [(*b*) in notes of the Governor and Company of the Bank of England expressed to be payable to bearer on demand]; The receipt and payment whereof he the said [*grantor*] doth hereby admit and acknowledge, and of and from the same and every part thereof, doth acquit, release, and discharge the said [*grantee*], his heirs, executors, administrators, and assigns, and every of them for ever, by these presents; *He* the said [*grantor*], with the privity and approbation of the said [ ] his wife, testified by her being a party to, and sealing and delivering these presents, doth hereby for himself, his heirs, executors, and administrators, and for the said [ ] his wife, covenant, promise, and agree, with and to the said [*grantee*], his heirs, executors, administrators, and assigns, that he the said [*grantor*] and [ ] his wife, and all other persons having any estate or interest therein, shall and will at the request of the said [*grantee*], his heirs, executors, administrators, or assigns, but at the proper

COVENANT TO SURRENDER WIFE'S COPYHOLD OF INHERITANCE, AS A COLLATERAL SECURITY.

of attorney to confess judgment, and covenant; and a surrender of wife's customary lands.

Testatum.

Covenant by grantor, that he and his wife will conditionally surrender her copyhold estate to grantee of annuity, upon trusts to secure same.

(*a*) *Vide ante*, 460 (*b*). (*b*) *Vide ante*, 460 (*a*).

COVENANT TO SURRENDER WIFE'S COPYHOLD OF INHERITANCE, AS A COLLATERAL SECURITY.

costs and charges of the said [*grantor*], (*c*) surrender into the hand of the lord or lords, lady or ladies, of the said manor of for the time being, according to the custom of the same manor, ALL THOSE several messuages, tenements, cottages, lands, hereditaments, and premises, situate, &c. with their and every of their rights, members, and appurtenances, TO THE USE of the said [*grantee*], his heirs and assigns for ever, at the will of the lord or lords, lady or ladies, according to the custom of the said manor; *Nevertheless* UPON CONDITION, that if the said [*grantor*] or [ ] his wife, or his or her heirs, executors, or administrators, should well and truly pay or cause to be paid the said annuity or yearly sum of pounds, on the days and times and in the manner in the said bond or obligation mentioned and appointed for payment thereof, then the said surrender shall be void. AND *it is hereby declared and agreed* by and between the said parties to these presents, that he the said [*grantee*], his heirs and assigns, shall stand seised and possessed of the said hereditaments and premises hereinbefore mentioned, UPON THE TRUSTS, and to and for the intents and purposes, and with, under, and subject to, the powers, provisoes, declarations, and agreements hereinafter expressed and declared of and concerning the same, that is to say; UPON TRUST, to permit and suffer the said [*grantor*], and [*Mary*] his wife, and the heirs and assigns of the said [*Mary*], to receive and take the yearly and other rents; issues, and profits thereof, to his, her, and their, own use and benefit, until some default shall be made of or in payment of the said annuity or yearly sum of pounds, or some part thereof, on the days or times, and in manner mentioned and appointed for payment thereof as aforesaid. (*Add trusts for sale,* &c. ut ante, 551.); *And subject* to the trusts hereinbefore declared, concerning the money so to be invested or laid out at interest as hereinbefore mentioned, the same and the interest thereof, or so much

Trusts for sale, &c. and subject thereto. Monies produced by sale to be in trust for wife and her heirs.

(*c*) When the wife's estate is to be a security for an annuity, the surrender should generally be actually made before paying the purchase money, for fear of the husband's death before the surrender is made. *Vide ante,* 563 (*c*).

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thereof, and of the interest thereof, as shall not be applied in answering such trusts as are hereinbefore declared thereof, shall be IN TRUST for the said [ ], the wife of the said [*grantor*], her heirs and assigns. AND *it is hereby declared and agreed* by and between the said parties to these presents, that after the decease of the survivor of them the said [*nominees*], and full payment unto the said [*grantee*], his executors, administrators, or assigns, of the said annuity, or yearly sum of pounds, and such proportional part thereof, and all costs, charges, damages, and expences as aforesaid, the said several hereditaments and premises hereby covenanted to be surrendered as aforesaid, or so much thereof (if any) as shall not be disposed of under or in pursuance of the trusts hereinbefore declared or expressed, shall be in trust for the said [ ], the wife of the said [*grantor*], her heirs and assigns for ever, and shall be assigned and surrendered as she or they shall direct or appoint. (*Add declaration that conveyances, &c. made* by the said [*grantee*], his heirs or assigns, *shall be as valid as if* the said [*grantor*] and [ ] his wife, or either of them, or the heirs of the said [*wife*] *had joined therein; grantee's receipts to be sufficient discharges; and indemnity clause to grantee; and covenant by grantor to pay annuity* (*c*), ut ante, 553.) AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*grantee*], his heirs and assigns, by these presents, in manner following, that is to say; that he the said [*grantor*] and [ ] his wife, now at the time of the sealing and delivery of these presents, have in themselves good right, &c. (*Add the remainder of the covenants,* ut ante, 555; *and for further assurance from the grantor and his wife, and the heirs of the wife; and defeazance on judgment,* ut ante, 557; *and clause for repurchasing the annuity,* ut ante, 543 *or* 559.) IN WITNESS, &c.

Covenants for title, &c.

(*c*) The remedies, which the grantee enjoys for securing the payment and recovering the arrears of an annuity, are various, according to the nature and provisions of the grant, and the circumstances by which the

rights of the grantee may have been affected subsequent to the grant, and there are few sorts of annuities to which some of these remedies do not apply. As, at present, so much money is advanced upon annuities, nothing which can affect the rights either of the grantor or grantee ought to be passed over unnoticed: and this seems to be a proper place for taking a general elementary view of the subject.

Definition of a personal annuity.

An annuity, in the strict technical acceptation of the word, is defined by Lord Coke to be, a yearly payment of a certain sum of money granted to another in fee, for life, or years, charging the person of the grantor only. Co. Litt. 144 b.

Distinction between a rent-charge

and a rent-seck.

If a man, seised of land, grant a yearly rent, to be issuing out of the land to another in fee, or in fee-tail, or for term of life, &c. with a clause of distress, &c. it is a rent-charge; but if the grant be without a clause of distress, then it is a rent-seck, or a dry rent, for which, before 4 Geo. II. cap. 28, s. 5, no distress was incident. Litt. s. 218. Gilb. Rents, 38; Noy's Max. 40, 5th ed. 132, 9th ed.

When both the person and estate be charged, it is generally termed an annuity;

If both the person and the estate be made liable, as they most commonly are, then it is generally called an annuity: whether the one or the other shall be liable, is in the election of the grantee; which election, when once distinctly made, is final and conclusive. Co. Litt. 144, b. Litt. s. 219. 1 Bac. Abr. 177, Gwil. ed. *Annuity and Rent-charge.*

and the grantee may electwhich it shall be.

Thus, says Littleton, if a man grant by his deed a rent-charge to another, and the rent be behind, the grantee may chuse whether he will sue a writ of annuity for this against the grantor, or distrain for the rent behind, and the distress detain until he be paid. But he cannot do, or have them, both together, &c.; for if he recover by a writ of annuity, then the land is discharged of the distress, &c; and if he do not sue a writ of annuity, but distrain for the arrears, and the tenant sue his replevin, and then the grantee avow the taking of the distress in the land in a court of record, then is the land charged, and the person of the grantor discharged of the action of annuity. Litt. s. 219. 2 Sand. Uses, 250.

Some cases in which the grantee cannot elect.

But if a man grant a rent-charge to another and his heirs, and the grantee dies, and his widow brings a writ of dower against the heir, and the heir, in bar of her dower, claims the same to be an annuity, and not a rent-charge, in order to defeat her dower; because of an annuity that charges only the person, and issues not out of any lands or tenements, she is not dowable; Co. Litt. 32, a;—yet the widow shall recover her dower; for the heir cannot determine his election by claim, but by suing of a writ of annuity, as Littleton says; neither can the heir after the endowment have a writ of annuity for the two parts which remain, because that would not be according to the deed of grant, for either the

whole must be a rent-charge, or the whole an annuity. But Littleton is to be understood with some limitation: for of a rent granted for equality of partition, a writ of annuity does not lie, because it is of the nature of the land descended. Also, of such a rent as may be granted without deed, a writ of annuity does not lie, though it be granted by deed. Co. Litt. 144, b. Nor upon a rent created by way of reservation. 1 Roll. Abr. 226 (C), pl. 1. Co. Litt. 144, a. Nor upon any rent due by prescription against an heir; Bro. *Annuitie*, pl. 45; because it cannot be known whether he have any land by descent from the same ancestor who granted the rent. Poph. 87. 1 Roll. Abr. 227 (D). Co. Litt. 102. a. 2 Vin. Abr. 507. Nor upon a rent granted for allowance of dower or recompence of a title, because it is in satisfaction of a thing real, and therefore shall not fall into matter personal, but retain the nature of the thing for which it is given. Plowd. Ann. 240.

Every rent-charge is an annuity, but every annuity is not a rent-charge.

This election of the grantee to convert an annuity into a rent-charge, and a rent-charge into an annuity, by the application of his remedy, shews that every rent-charge is properly an annuity, though every annuity be not a rent-charge, until by such determination in the choice of the remedy, the grantee may have made it *personal*, by charging the person of the grantor, or *real*, by distraining on his land.

Annuity by prescription

The sure test of the difference between an annuity and a rent-charge, is the remedy which the law gives for recovering the arrears. Thus, a man in *replevin* prescribed that the plaintiff and his ancestors have had common in his land, and used to pay ten shillings rent per annum to him and his ancestors for the same common, and so avowed for the ten shillings; and it was holden good by the Court: and they said, this is not rent, but *annuity*, for he cannot have assize, as he cannot have rent out of his own land; and yet it was held a good prescription by the Court: but he ought to alledge seisin: and so it appears, a man may have a prescription to distrain in his own land, Bro. Abr. *Prescription*, pl. 1. 2. Vin. Abr. 504, *Annuity* (A. 2), pl. 2. 7 Co. 23. b.

Although a proper rent cannot be granted out of an incorporeal inheritance, yet it will be good as a contract.

A rent, in the strict acceptation of the word, cannot be granted to a subject (*Mountjoy's* case, 5 Co. 4.) *out of* an incorporeal inheritance, such as a rent, a common, an advowson, a fishery, an office, a corrody, the mulcture of a mill, tythes, fairs, markets, liberties, privileges, franchises, and the like; but only out of lands or tenements, whereunto the grantee may have recourse to distrain, or which may be put in view to the recognitors of an assize. Bro. Abr. *Assize*, pl. 2. Co. Litt. 144, a 7 Co. 23. b. *Talentine* v. *Denton*, Cro. Jac. 111. *Rickman* v. *Garth*, ibid, 173. Yet such a grant will bind the grantor

by way of contract, but the grantee cannot distrain. Co. Litt. 47, a. *Dean and Chapter of Windsor* v. *Gover*, 2 Saund. 302.

Importance of pointing out grantee's right of election.

The right of election which the grantee enjoys, of charging the person, or distraining on the land, is a very important consideration, as the exercise or waiver of this right may materially affect the interests both of the grantor and grantee. It is not however to be imagined, that any other action, which a grantee may bring in consequence of having such additional remedy given him by the grant, for recovering the arrears of the annuity against the grantor or his representatives, such as debt, covenant, or the like, will produce the same effect as a writ of annuity, which is a specific remedy, and attended with the specific effect before mentioned. Plowd. Ann. 239.

An action of debt, covenant, &c. do not produce the same effect as a writ of annuity.

Of the determination of the election.

Neither the presumption of law, nor the *express grant as rent* shall take from the grantee the benefit of his election, where no default was in him. Therefore, said Chief Justice Popham, if a *rent-charge be granted in tail*, the grantee may bring a writ of annuity, and thereby prejudice his issue, because then it shall not be taken to be an entail, but as *a fee simple conditional* ab initio. *Fulwood* v. *Ward*, Poph. 87. If the grantee of a rent bring an assize for it, he shall never after have an annuity; because, by bringing the assize, he has elected it to be a rent. But this determination of the election of a grantee must be by action or suit in a court of record; for although the grantee distrain for the rent, yet he may bring a writ of annuity and discharge the land. But if the grantee bring a writ of annuity, and at the return thereof appear and count, this is a determination of his election in a court of record, although he never proceed any further. So if the grantee bring an assize for the rent, and make his plaint, he shall never after bring a writ of annuity. But the purchasing a writ of annuity and entry of it in a court of record, or of an assize, is no determination of the election; because a stranger may purchase a writ in the name of the grantee, and enter it of record; but if the grantee appear thereto, &c. that amounts to a determination of his election, as it has been said. Co. Litt. 145, a. So an avowry in a court of record, which is in the nature of an action, is a determination of his election before any judgment given. Co. Litt. 145, b. So if A grant a rent-charge to B, which is paid to him, and then B grant it over to C, and the tenant of the land attorn, C shall not in that case have his election to make this an annuity, but must take it as a rent-charge. Co. Litt. 150.

How an annuity is said to be personal.

When an annuity is said to be *personal*, not *real*, it is not to be understood to be that species of personalty which vests without any specific bequest in the executors. If proceeding out of the personal estate

of the grantor, it is personal only as to the remedy, but properly real as to its descent to heirs. *Turner* v. *Turner*, Ambl. 782. 1 Bro. Ch. Ca. 324. So in Lord *Stafford* v. *Buckley*, 2 Ves. sen. 179, Lord Hardwicke said, all the rest of the personal estate, that could pass to executors, would go to them: but this is a kind of personalty which, according to *Doctor and Student*, p. 90, 18th ed. would not be assets in executors, and consequently will not go to them by being named executors: an annuity in fee being a personal inheritance, which the law suffers to descend to the heir, but has nothing to do with the realty, as appears from Co. Litt. 20.

Rent-charge, without charging the person.

Littleton says, if a man would that another should have a rent-charge issuing out of his land, but would not that his person be charged in any manner by a writ of annuity, then he may have such a clause in the end of his deed. *Provided always, that this present writing, nor any thing therein specified, shall any way extend to charge my person by a writ or an action of annuity, but only to charge my lands and tenements with the yearly rent aforesaid, &c.* Then the land is charged, and the person of the grantor discharged. Litt. s. 220. For the operation of this sort of *proviso*, see Dy. 222. a. and 2 Co. 72. a. Thus it appears, that when in a general grant the law gives two remedies, the grantor may provide that the grantee shall not use one of them, and leave the party to the other. Co. Litt. 286. b. But where the grantee has but one remedy, there that remedy cannot be barred by any proviso, for such a proviso would be repugnant to the grant. Co. Litt. 146. a. 2 Vin. Abr. 508, pl. 7.

Annuity of lands in two counties.

If a rent be granted out of land in two counties, an assize does not lie, but a writ of annuity: the reason being, it is presumed, because the lands of both counties cannot be put in view of the recognitors of the assize. But Brooke particularly says, that if a man grant rent out of land in one county, and give a power to distrain for it upon land in another county, and he bring assize, the assize shall be in the first county; but if both lands lie in the same county, they shall be both put in view. Bro. Abr. *Rentes*, pl. 22. Co. Litt. 147. a. 7. Co. 23. b.

Annuity granted by two persons.

If A be seised of lands in fee, and he and B grant a rent-charge to one in fee, this, *primâ facie*, is the grant of A and the confirmation of B; but yet the grantee may have a writ of annuity against *both*. So if two men grant an annuity of twenty pounds *per annum* to another, although the persons be several, yet he shall have but one annuity: but if the grant be *obligamus nos et utrumque nostrum*, the grantee may have a writ of annuity against *either* of them; but he shall have but one satisfaction. Co. Litt. 144, b. *vide ante*, 502 (*a*).

A personal annuity is assignable.

Not only the grantee but his heirs, and his and their grantee also, may have a writ of annuity. Co. Litt. 144, b. Formerly it was doubted whether an annuity was assignable, though *assigns* were mentioned in the grant; the argument being, that it was a mere personal contract, and therefore a *chose in action*. See the cases in 2 Vin. Abr. 515, and 3 Vin. Abr. 151. But in a case in C. B. 3 Cha. I, this objection, which in strictness of law carried force with it, was over-ruled. *Gerard* v. *Boden*, Hetl. 80. It seems too, that naming *assigns* is not essential to the making an annuity assignable, the principle of the objection to its being so being the same, whether *assigns* are mentioned or omitted. However, Perkins, in the special case of an annuity *pro consilio impendendo*, requires naming of assigns. Perk. s. 101. Even then, too, he questions the annuity being assignable. But this was settled in *Maund's* case. 7 Co. 28, b.; one point resolved being, that express words would make such an annuity assignable. Hargr. n. Co. Litt. 144, b. (1).

The heirs are not bound, unless named in the grant.

If a man grant an annuity to another and his heirs, without saying for *himself and his heirs*, it shall determine by the death of the grantor, although he may so grant a rent out of land, or a rent-charge, of which he is seised; for the rent charges the land, and the annuity the person only. Bro. Abr. *Charge*, pl. 54; and *Estates*, pl. 65. So if a rent-charge be granted to a man and his heirs, he shall not have a writ of *annuity* against the heir of the grantor, although he has assets, unless the grant be for him and his heirs. Co. Litt. 144 b. The reason is, because our law presumes that it is not intended to include the heir in the obligation, when he is not named; and consequently, in the case supposed by Lord Coke, it is too late to elect to make the rent-charge an annuity after the death of the grantor. *Vide* Co. Litt. 383, b. 384, b. 386, a. 10 Co. 128, a. 2 Vin. Abr. 505. *Annuity* (B). It would be the same, though the grantor should by his deed oblige himself and his heirs to warrant the annuity to the grantee and his heirs; for this does not enlarge the grant: *car garanty ne poit amender un estate*. Plowd. Ann. 236. In *Bodvell* v. *Bodvell*, Cro. Car. 170, the Court held, that an annuity which charges the person who grants it, though with a clause of distress, not being granted for *himself and his heirs*, until election made and a distress taken, is merely personal; and therefore that a release of actions personal is clearly a bar. [See *Milner* v. *Branch*, 5 M. and S. 411 as to the construction of a personal covenant.]

Successors of bodies politic are bound without being named in the grant.

But this reasoning fails in application, if the grantor of the annuity be a body politic, and as such has perpetual continuance. Hargr. n. Co. Litt. 144, b. (2). As, if formerly an abbot, with consent of his convent, had, by deed under their common seal, granted an

annuity to another in fee, without saying for *him and his successors*, yet would his successors have been charged with the annuity. And so it was adjudged in Sir *Thomas Wroth's* case, that although the king had granted to him an annuity, without saying in the patent for his *heirs and successors*, yet that it would bind his successors; for he granted it as king in his political capacity, which is perpetual and never dies, but has continuance in his successor. Plowd. 457.

A void rent-charge may be a good annuity.

Where a person intending to grant a rent does it in such a manner as to be void as a rent, yet it shall be generally good as an annuity: as if the land, out of which it is to be issuing, do not belong to the grantor; the fund, with which it is charged, be insufficient; the person directed to pay it be misnamed; or the sources, out of which it is to arise, be uncertain, precarious, or imaginary. For, in general, the words in the deed, *to perceive out of*, operate as a limitation, from whence the grantee is to receive what is granted. And this difference is taken, that where it is granted by the name of parcel of another rent, &c., if the grantor have no such rent, the grant is wholly void: and where it is granted to perceive of such a sum, &c. it is good to charge the person by the word *perceive*. Bro. Abr. *Grauntes*, pl. 4. 2 Vin. Abr. 507, (E.)

The word *perceive* charges the person.

How annuities become extinct, and how apportioned.

If a man have a rent-charge to him and to his heirs, issuing out of certain lands, if he purchase any parcel of this land to him and to his heirs, all the rent-charge is extinct, and the annuity also, if he did not elect to charge the person before he made the purchase; Dyer, 140, a. pl. (20); Gilb. Rents, 152; because the rent-charge cannot by such manner be apportioned. But if a man, who has a rent-service, purchase parcel of the land out of which the rent is issuing, this will not extinguish all, but only for the parcel; Gilb. Rents, 151—152; for a rent-service in such case may be apportioned according to the value of the land. But if a man hold his land of his lord by the service, to render to his lord yearly, at a certain feast, a horse, a golden spear, or a clove, gilliflower, or the like; if in this case the lord purchase parcel of the land, such service is taken away, because such service cannot be severed nor apportioned. Litt. s. 222; and see Noy's Tenures, 6, 7, 8, 292, 293, 294, 9th ed. Noy's Max. So if the grantee of a rent-charge take a lease of the land for years, he shall not after the years are ended have his election to make this an annuity. *Fulwood* v. *Ward*, Poph. 87. So wherever an annuity is granted for the performance of any duty or service, and the grantee refuses or neglects to perform it, the annuity becomes extinct. Co. Litt. 402. a. As in the instances of lawyers and physicians, *pro concilio impenso et impendendo*, with this difference, that the physician must go to his patient, though the client

must attend or write to the lawyer. Bro. Abr. *Annuitie*, pl. 7, pl. 18. 2 Vin. Abr. 514, pl. 2. Yet in *Mingie*'s case, Poph. 135, a writ of annuity was brought by him *pro concilio impenso et impendendo*; defendant pleaded in bar, that he carried a bill to the plaintiff to be signed, and because he refused, he detained the annuity: and *per curiam*, this is no plea; for he is bounden to give advice, but not to set his hand to every bill, for this may be inconvenient to him. So if an annuity be granted to a man for keeping a park, and the game be not preserved through his fault, that is an extinguishment of the annuity. Bro. Abr. *Annuitie*, pl. 49. Upon the same principle, if an annuity be granted *pro decimis*, and the grantee be unjustly disturbed of the tithes, the annuity ceases: for these being the express considerations of the annuities, they are thereby rendered conditional. Co. Litt. 204. a. So again, if an annuity be granted *pro homagio et servitio*, and the grantor disclaim the services in a writ of annuity, the annuity is extinct. Bro. Abr. *Extinguishment*, pl. 37. And if an annuity be granted so long as the grantee is *benevolens proferens et amicabilis* to the grantor, and the grantee labour to put the grantor out of service, it is a forfeiture of the annuity. Bro. Abr. *Annuitie*, pl. 35; and *Double plee*, pl. 100.

A rent in fee does not escheat on failure of heirs, but sinks into the land.

A rent differs materially from land; because the old principles of the feudal law looked upon every modification of landed property, which was considered to be against common right, with a very jealous eye. Upon this principle, the law, in most instances, avoided giving by implication a continuance to the rent, beyond the period expressly fixed for its continuance. Thus, if a rent be granted to a man and his heirs generally, and he die without devising the rent, and without an heir, the rent does not escheat, but sinks into the land. Butl. n. Co. Litt. 298, a. (2). And as a devise, though it only takes effect at the moment of the testator's death, will prevent an escheat; 3 Cru. Dig. 440, s. 21, 2d ed.; so it seems by analogy, that a devise will prevent the rent from sinking into the land. But it seems there must be an express devise of the rent, and not a mere authority to sell. *Reeve* v. *The Attorney General*, 2 Atk. 223. sed. vide contrâ, Lord Nottingham's MS. n. Co. Litt. 236. a. (l).

The reason why a rent-charge determines on the death of grantee, without heirs.

The reason why the grant of a rent out of lands to a man and his heirs, determines on his death without heirs, is, because such grants are, as it is termed in the law books, *against common right*: Co. Litt. 147. b. that is, they were against the policy of the *feudal structure*. Gilb. Rents, 133. For in their original creation, they were against the reason and policy of that law; since they were so far from contribut-

ing to the strength of the kingdom, that they really weakened it, because the *tenant*, whose land was subject to such charge, was the less able to provide himself for the field, or to perform the duties of the feudal or military tenure; and the *grantee* of a rent-charge was under no obligation to attend the grantor in the wars, or venture his life for the public, on account of the benefit he received from the grant, as the person who took lands under a *feudal donation* was obliged to do. Noy's Tenures, 296, 6th ed. It is upon this principle, that when there is not a limitation over in fee, a tenant in tail of a rent acquires, by his recovery, no more than a base fee, determinable on failure of his issue. But if there be a limitation in fee, after the particular limitation in tail, the grantor has substantially limited the rent in fee; and therefore it is doing him no injustice that the recovery should give the donee, who suffers it, an estate in fee simple. Butl. n. Co. Litt. 298, a. (2).

How a rent, *pur auter vie* becomes extinct.

There cannot be an *occupant* of any thing which lies in grant, and which cannot be conveyed without deed; 2 Roll. Abr. 150. *Occupant*, (C.) pl. 1. Co. Litt. 41, b. 388. a., such as rents, advowsons, commons, reversions, remainders, &c. because these things have no actual existence, except *in jure et intellectu;* and the only means the law gives to gain an estate by occupancy, is by entry. Bridg. 94. But no *entry* can be made into a thing which has no real existence, consisting purely in the agreement of the parties, and depending on the institutions of society for its being. 2 Bac. Abr. 562, 567. *Estate for Life and Occupancy*, (B) 1. (3). 16 Vin. Abr. 70. *Occupant* (B.) Therefore if a rent be granted to A for the life of B, and A dies, living B, the rent determines upon the death of A equally as if it had been granted to him for his own life. Vaugh. 199. So if a man grant a rent to another, his executors and assigns, for the life of J S, and afterwards the grantee die, making an executor, but no assignee; the executor shall not be a special occupant, because it is a *freehold* which cannot descend to the executor, and the rent is extinct. *Buller* v. *Cheverton*, 2 Roll. Abr. (R.) pl. 3. 151—2. *Salter* v. *Butler* Noy, 46. Cro. Eliz. 901. Yelv. 9. *Salter* v. *Boteler*, Moore, 664, S. C. Rent granted to one, his executors, and administrators, *pur auter vie*, and the grantee dies, it shall not go to the administrator, as special occupant, but determines by the death, unless there has been an assignment, as mentioned *postquam*, 588. *Salter's* case, Hale's, MS. Hargr. n. (4). Co. Litt. 41, b. So if a man grant a rent-charge to another for the life of J S, the remainder to the right heirs of J S; and the grantee die, living J S; the rent ceases for the benefit

of the tenant of the land; *quia nemo est hæres viventis*; Noy's Tenures, 75, 371, 9th ed. Noy's Maxims; but if J S die, living the *auter vie*, his heir shall have the rent after the death of the *auter vie*. *Salter* v. *Butler*, Noy, 47. If a rent be granted to J S and his executors, during the life of B, by the death of J S, the rent is determined; because, says Chief Baron Gilbert, the executors cannot take as special occupants, since the nature of the thing lying in agreement, is not capable of occupation; nor can they take by the grant, because then they must take as representatives, which they cannot be of a freehold; and the law will not permit people at their pleasure to vary the course of descents. So, he says, if rent be granted to A, his executors and assigns, during the life of B, and A die intestate, the administrator cannot claim the rent; not as occupant, because no man can make himself a title to a rent by way of occupancy; not by the deed, because he is not assignee within the words of the grant by the letters of administration; therefore the rent is determined, since none can claim it as occupant. 2 Bac. Abr. 566—7. *Estate for Life and Occupancy* (B), 3. So if the tenant *pur auter vie* of a rent assign or convey it to another, without naming his heirs, the rent would determine on the death of the assignee in the life of the *auter vie*, because the assignor could not have any right, as it would have been contrary to his own grant, if he claimed an interest which he had transferred to another; and the assignee being dead, his descendants could not claim, because they were not comprehended in the words of the assignment. 2 Bac. Abr. 561. *Estate for Life and Occupancy* (B).

How a rent *pur auter vie*, may be preserved for the heir of the grantee.

If the rent be originally limited to the grantee and his heirs, during the life of *cestui que vie*, the heir of the grantee shall have the rent, because it is a descendible freehold; Vaughan, 201. and the grantee or his heir may assign it to whom they please for the life of *cestui que vie*. Co. Litt. 41. b. 388. a. Vide *Vernon* v. *Gatacre*, Dyer, 253. But if the grantee of a rent for another man's life, not originally limited to his heirs, wishes to preserve it for his heirs, in case he should die before the *cestui que vie*, then he should, as mentioned in the cases cited *ante* 587, convey or assign his estate in the rent to another man and his heirs, either in *trust* for the grantee and his heirs, or to the *use* of the grantee and his heirs during the life of the *cestui que vie*; the latter method seems to be preferable, because it would execute the legal estate in the rent in the tenant *pur auter vie*, and his heirs, by the statute of uses. 27 Hen. VIII. c. 10. s. 4. Gilb. Uses, 86; Sugd. ed. 193. Butl. n. Fearne's Rem. 529.

It seems, before 29 Car. II.

Before the statute of frauds, it seems, according to the better

opinion, that no estate *pur auter vie* could be devised under the statutes of wills, 32 Hen. VIII. c. 1. and 34 & 35 Hen. VIII. c. 5. In *Gawen* v. *Ramtes*, Cro. Eliz. 805, Moor, 625. S. C. the Court was equally divided upon this point; but Popham, C. J. said, that the greater part of the judges were of his opinion, that such an estate was not devisable under these statutes. See Dyer, 253. b. (100.) *Sherewood* and *Nonne's* case, 1 Leon. 252, *ultimo*. *Salter* v. *Butler*, Noy, 47.

c. 3, s. 12, no estate *pur auter vie*, was devisable.

By the statute for preventing frauds and perjuries, 29 Car. II. c. 3. s. 12. it is enacted, "that from henceforth *any* estate *pur auter vie*, shall be devisable by will in writing, signed by the party so devising the same, or by some other person in his presence, and by his express directions, attested and subscribed in the presence of the devisor by three or more witnesses; and if no such devise thereof be made, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of a special occupancy, as assets by descent, as in case of lands in fee simple; and in case there be no special occupant thereof, it shall go to the executors or administrators of the party that had the estate thereof by virtue of the grant, and shall be assets in their hands."

Any estate *pur auter vie* may be devised:

if no devise, shall be assets in the heir:

and if no special occupant, shall be assets in the executors;

By Mr. Fazakerly's act, 14 Geo. II. c. 20. s. 9. after reciting the above section of 29 Car. II. c. 3 it is enacted, "That such estates *pur auter vie*, in case there be no special occupant thereof, of which no devise shall have been made according to the said act, for prevention of frauds and perjuries, or so much thereof as shall not have been so devised, shall go, be applied, and distributed, in the same manner as the personal estate of the testator or intestate."

and be distributed as personal estate.

As by the statute of frauds, any estate *pur auter vie* may be devised, it seems, by analogy to the case of escheat, that if a rent *pur auter vie* be limited to a man and his heirs, and he make a devise, and die without heirs, the devisee would be entitled to the estate in the rent, and that the rent would not sink into the land. *Vide ante*, 586.

Devise of a rent *pur auter vie*, prevents it sinking into the land, on failure of heirs.

The late Mr. Hargrave, after *Salter's* case, cited *ante*, 537, adds, "However some have thought that executors and administrators, if named in the grant, might take an estate *pur auter vie*, though a *freehold*, even before the 29 Car. II. c. 3. and 14 Geo. II. c. 20. by which they are now entitled. See 3. Atk. 466. the authority relied on is Dy. 328, b." Harg. n. Co. Litt. 41. b. (4). *Vide* Noy's Max. 103, 105, 9th ed. This observation is very general, and it may be doubted whether Mr. Hargrave intended it to apply to rents granted *pur auter vie*.

It has been supposed that by virtue of the statute of frauds, an estate *pur auter vie* in a rent, continues for the executors or administrators of the grantee, when it is not limited to his heirs.

So the late Mr. Fearne says, "it seems, indeed, that in these cases of rents *pur auter vie*, upon the death of the grantee before the *cestui que*

vie (though strictly there is no general occupancy of rent), the terre-tenant, by holding the land discharged *i. e.* retaining the rent, might, perhaps, be considered in the *nature* of an *occupant* of the rent; and therefore, in that view, the particular estate might be understood to have a continuance, sufficient even to support a contingent remainder. But at this day *it seems* there can be no room for a question of that nature; for since the statutes of 29 Car. II. c. 3. and 14 Geo. II. c. 20. the rent is holden to continue in the representatives of the grantee dying in the life time of the *cestui que vie.*" Fearne's Cont. Rem. 233, 3d ed. 452, 5th ed. 306. 7th ed. for which he cites the following note to the first edition of 3 Peere Williams, 264. [D], and *Kendall* v. *Mickfield*, 3 Barnardiston's Rep. in Chan. 46.

"As to rents granted *pur auter vie*, the statute of frauds and perjuries has made an alteration; for by that statute, any estate, *pur auter vie* is made devisable, and if not devised away, shall be assets in the hands of the heir, if limited to the heir; if not limited to the heir, it shall go to the executors or administrators of the grantee, and be assets in their hands. So that, if since that statute a rent be granted to A, for the life of B, and A die, living B; A's executors or administrators shall have it during the life of B; for the statute is not only made to prevent the inconvenience of scrambling for estates, and getting the first possession after the death of the grantee; but likewise for preserving and continuing the estate during the life of the *cestui que vie;* and it is reasonable, since the grantee might by deed have disposed of the rent during the life of the *cestui que vie*, that, though by his dying without having made any such disposition, in nicety of law this estate would have determined; yet, by the statute, that interest which passed from the grantor ought to be preserved, and shall go to the executors or administrators of the grantee during the life of the *cestui que vie.* And the statute in this case does not enlarge, but only preserves the estate of the grantee. By the Lord Keeper Harcourt, in the case of *Rawlinson* v. *The Duchess of Montagu et al.* 4th of Dec. 1710, *though this was not the principal point.*" 3 P. Wms. 264. [D]. 2 Eq. Ca. Abr. 394. See the real point in *Rawlinson* v. *Duchess of Montague*, 2 Vern. 667.

The point determined by the case of *Kendall* v. *Mickfield*, 3 Barn. Ch. Rep. 46. 15 Vin. Abr. 457. cited by Mr. Fearne, does not affect the present question; it was a mortgage of a rent-charge of 160*l.* a year for three lives, to J S, his executors, administrators, and assigns, *to hold* to him, his heirs and assigns, *upon trust*, that J S, his executors, administrators, and assigns, should enjoy 100*l.* a

year of it, till the mortgage money was satisfied; and it was determined that the legal estate of this rent belonged to the heir at law, but that he was a trustee for the executor of J S. But the Master of the Rolls said, the question is, whether the statute of frauds and perjuries has not altered the law in this respect? and whether a rent is not within the relief of that act of parliament, as well as any other sort of inheritance? And his honour was of opinion, that it was; because, as he said, the statute intended to make a general alteration with regard to all sorts of estates, that were granted *pur auter vie;* and, he added, a rent-charge is as much within the intention of that act of parliament, as any other hereditament. 3 Barnardis. 49.

So Mr. Wooddeson, in his Vinerian Lectures, says, "There never could be a general or common occupant of incorporeal hereditaments, as of a rent; but a special occupant there may be, if a rent be granted to a man and his heirs, during the life of another person. 3 Wms. 264. Here therefore I must take notice of an opinion of Sir William Blackstone, 2 Black. Comm. 260, who holds, that since the statutes which have abolished the title by common occupancy, if a rent should be granted to A during the life of B, without mentioning the heirs of the grantee, and the grantee should die in B's life time, the estate would be determined, and would not survive to the executors or administrators under the protection of those statutes. This seems founded on two unstable principles: first, that there could, at common law, be no occupancy at all of an incorporeal hereditament, whereas there might be a special occupant; secondly, that if the statutes were to be extended to this case, it would be *creating* a residue, on purpose to give it to the executors; whereas at common law, the rent would not have determined from the proper effect, tenor, and extent of the grant, but only because no person could intitle himself to it by occupancy, properly so called, the thing being of an incorporeal kind. The former of the statutes therefore does not, strictly speaking, create, but preserve and continue the estate, by providing a claimant to enjoy all that interest *which passed out of the grantor, and which might have been disposed of by the original grantee in his lifetime.* Therefore I cannot adopt the opinion in this instance of the learned commentator on the laws of England, which is moreover discredited by a judicial authority; 3 P. Wms. 264, n. D.; and see ibid. 33, n. B; though it was not in that case the principal matter which awaited the determination of the court; and the sentiments of lawyers are still divided on this occasion." 2 Wooddeson's Lectures, 271.

So Mr. Sanders, after citing *Buller* v. *Cheverton*, ante, 587, and stating the 12th section of the statute of frauds, says, "since this statute,

the executor or administrator may be a special occupant of a rent. See *Rawlinson* v. *Montague*, cited note D. 3 P. W. 264." 2 Sand. Uses, 248. 3d ed. [306, 4th ed. and see n. a. where Mr. Sanders qualifies this opinion.] (But how can there be an occupant of that which is not capable of occupation?) And see Sand. Uses, 376, 1st ed. 2 Sand. Uses, 268, 2d ed. Sand. n. 2. Atk. 467; and note the vacillation.

Having stated the opinions in favour of the proposition, that by the statute of frauds and perjuries, the common law is so far altered, that an estate *pur auter vie* in a rent, continues for the executors or administrators of the grantee of the rent, when it is not limited to his heirs; —and that since this statute, an executor or administrator may be a special occupant of a rent; *i. e.* may take it by way of limitation, although it be a descendible freehold; 2 Sand. Uses, 249, 3d ed. Sand. n. 2 Atk. 467;—and having shewn that there is no other authority for such a conclusion, than the *dicta* of two judges when the question was not before them; it now remains to state the opinions contrary to the above proposition.

The better opinion is, that the statute has made no alteration in the common law doctrine as to estates *pur auter vie* in rents.

Thus, Lord Chief Justice Holt, in the reign of Queen Anne, in a case in which the question of occupancy was before the court, said, "If a man grant a rent out of his lands to A, for the life of B, shall not the rent extinguish if A die? for there wants a grantee." *Smartle* v. *Penhallow*, 2 Ld. Raym. 1000. So in another report of the same case, it was agreed by the whole court, that "if rent be granted to one for three lives, and he die without disposition, living *cestuy que vies*, yet the grantor shall hold the land discharged; because occupancy cannot be of a rent, for that can only be of lands which pass by livery, whereby the freehold passes, and shall not revert again until the limitation be determined; and it is for the sake of a *præcipe* of a stranger." *Smartle* v. *Penhallow*, 6 Mod. 68. So Lord Chief Baron Comyns, in his Digest, *Estates* (F. 2.) long after the statute of frauds, says, "there cannot be an occupant of a rent. Co. Litt. 41 b. Cro. Eliz. 721. 901. R. Mo. 664. 2 Roll. 150. l. 48. And things, of which there cannot be an occupant, determine by the death of tenant for life. Vaugh. 201. And if there be a remainder limited upon his estate, it commences immediately. Per Poph. Mo. 664." So Lord Chief Baron Gilbert, many years after the statute of frauds, deliberately and decidedly states his opinion, that personal representatives could not take a freehold estate lying in grant, although it were expressly limited to them at the time of its creation. *Vide ante*, 588. So Lord Hardwicke, eleven years after the Statute of George the Second, clearly expresses his opinion, that the law was not altered in respect to estates *pur autre vie* in rents.

Thus in the case of *Savery* v. *Dyer*. Ambl. 139, which is thus stated: "Richard Dyer, by will, gives to his kinsman John Savery, during the natural life of his executor, one annuity or yearly sum of fifty pounds, to be paid him by his executor, by equal quarterly payments, to commence from his decease; and appointed A B executor. John Savery died after the testator, in the life time of the executor. Whether the annuity determined on his death, or is transmissible to his executors? Lord Chancellor Hardwicke, after argument:

Annuity out of personal estate bequeathed to A during life of another person, A dies in the life of the other person; held, that the annuity continues for A's executor.

"The whole depends upon the question, whether the annuity determined on the death of the annuitant? shall lay down some *postulata*. 1st. This case must be determined on the rules of law, the same as a grant would be; for there are no particular directions in the will to shew it should be a mere personal annuity, as in that case cited out of Prec. in Ch. 173. nothing arises from intention.

Aliter if such devise of annuity be charged on real estate.

"2d. It is to be considered as an annuity arising out of the personal estate, consequently it is a personal annuity: and the real estate, by this will, cannot be charged with it; or, if it is, it can only be considered as a security or supplemental fund to the personal estate.

"Am of opinion the annuity did not determine, both upon the reason of the thing, and the cases determined. No authority in point has been cited at the bar; though I have found one or two that come near it.

"An annuity is a personal thing, and in order to be given to another wants no words of limitation; if it is to continue after the death of the annuitant, it goes to his executors.

"There is a difference between an annuity existing at the time of the will, and one created by it *de novo*.

An annuity devised *de novo* to A, he shall take it for life.

"If one gives by will an annuity, not existing before, to A, A shall have it only for life; for if A might give it to his executors, it might go from executors to executors for ever. If personal annuity would go so, how would it be in case it was given to A during the life of B? It was said, that as without these words, *viz.* 'during the life of B' it would go to the devisee for his life, so these words are a restriction on the estate, and make it a joint estate for both their lives. Consider the reason: *if a rent charge out of lands is granted, it will be so from necessity; it shall determine with the life of the grantee; the reason, it is a realty and cannot go to the executor. It cannot go to the heir, because it is not fee-simple, tail, nor conditional, nor does he take* nominatim; *there cannot be any occupancy* (Dy. 186. Cro. El. 721. 901.), *because it does not lie* in prendre, *there is no necessity for the law to cast the freehold in any body, as in the case of land; no body can take.* See if the reasons of the case of rent hold in personal annuities. They do not. The executors can take personal annuities; if

"3 Wms. 264."

"*Holden* v. *Smalbrook*, Vaug. 199, 200."

A die in the life-time of B what necessity then for determining it on A's death? The executors taking, affords an answer to the argument made by defendant's counsel, that the words, 'during the life of B' are a restriction on the estate for life of devisee; such restriction could only be by implication: and as the testator has given an express limitation, it destroys that implication. 1 Ro. Abr. 831. pl. 5. One possessed of a term grants an annuity generally, and it was a grant for the whole term. *Cosby* v. *Hickford*, 2 Vern. 35. determined on the authority of the former. There is no difference between those cases. This does not differ from many cases on a will. Suppose one gives the interest on a bond, or a sum of money, to A, during the life of B; A dies in life of B; shall not his executors have the interest during B's life? There can be no doubt but they shall. I am of opinion, that the annuity is continuing, and that John Savery's executors shall have it during the life of the testator's executor. Am not concerned whether the law is so, for it seems to agree with the *intention of the testator*. Decree for plaintiff, an account, &c."

"*V. Rawlinson* v. *Duchess of Montague*, 2 Vern. 667."

So the author of the Commentaries says, "as before the statutes, there could no common occupancy be had of incorporeal hereditaments, as of rents, tithes, advowsons, commons, or the like, Co. Litt. 41. Vaugh. 201, (because, with respect to them, there could be no actual entry made, or corporal seisin had; and therefore, by the death of the grantee *pur autre vie*, a grant of such hereditaments was entirely determined) so now, I apprehend, notwithstanding these statutes, such grant would be determined likewise; and the hereditaments would not be devisable, nor vest in the executors, nor go in a course of distribution. For these statutes must not be construed so as to create any new estate, or keep that alive which, by the common law, was determined, and thereby to defer the grantor's reversion; but merely to dispose of an interest in being, to which by law there was no owner, and which, therefore, was left open to the first occupant. When there is a residue left, the statutes give it to the executors and administrators, instead of the first occupant; but they will not *create* a residue on purpose to give it to either. They only meant to provide an appointed instead of a casual, a certain instead of an uncertain, owner of *lands*, which before were nobody's; and thereby to supply this *casus omissus*, and render the disposition of law in all respects entirely uniform; this being the only instance wherein a title to a real estate could ever be acquired by occupancy." 2 Bla. Com. 260.

And in *Zouch* v. *Forse*, 7 East, 193, Mr. Justice Lawrence said, "the object of the statutes was to provide for the *occupation* of estates *pur auter vie*, which, upon the death of the owners, no person had a

present right to *occupy*, and to apply them for the benefit of the creditors and representatives of the former owners." See also 2 Watk. Cop. 196. Pres. Watk. Conv. 37. *Campbell* v. *Sandys*, 1 Scho. & Lefr. Irish Chan. Rep. tem. Lord Redesdale, 288. *Ripley* v. *Waterworth*, 7 Ves. 425. Noy's Max. 103, 105, 9th ed. 1 Cru. Dig. 124, 2d ed. Sug. Pow. 187, 189, 2d ed. 197. 3d ed. [199, 4th ed.]

Conclusion as to estates *pur auter vie* in rents: 1st, the power to devise:

Thus it appears, according to the better opinion, that by the statute of frauds, any estate *pur auter vie* which would have continuance after the death of the owner of the estate *pur auter vie*, may be devised; such as an estate in land *pur auter vie*, limited to the tenant and his heirs, or not limited to the heirs; because in the latter case, the estate would have had continuance, and belonged to the general occupant, who first entered for the remainder of the life of the *cestui que vie*; or such as a rent, or other incorporeal hereditament limited to the grantee and his heirs, for the life of another person; because in the latter case, the estate in the rent, &c. would have had continuance in the heir after the death of the grantee. But, that, if a rent, or other incorporeal hereditament, be limited for the life of another person to the grantee and his personal representatives, or be limited to him without naming any representatives whatever, although he may, by a deed to take effect in his life time, convey or assign it for the life of the *auter vie*; ut ante, 588; yet the statute of frauds does not enable the grantee to devise such a rent, but it sinks into the land on the death of the grantee *pur auter vie*, as it would have done before the statute; because there is no recital, nor any words in the statute of frauds, shewing the intention of the legislature to give continuance to an estate *pur auter vie* in a rent, or any other estate lying in grant, which would have sunk into the land before that statute.

2d, the continuance for personal representatives.

As the words of the statute of frauds, giving estates *pur auter vie* to executors or administrators, only extend to those cases in which there could be *an occupant* at common law, and which in rents, &c. it clearly appears there could not be; *ante*, 587; therefore if an estate *pur auter vie* in a rent, &c. be limited to a man and the *heirs of his body*, and he die without issue inheritable, having devised the estate; as according to the better opinion, the devise would be void, it being a *quasi* estate tail; *Saltern* v. *Saltern*, 2 Atk. 376. *Campbell* v. *Sandys*, 1 Scho. & Lefr. 281. *sed vide*, *Doe* dem. *Blake* v. *Luxton*, 6 Term Rep. 293; *ante*, 159 (*a*); it seems that the estate in the rent would not continue for the executors or administrators but would sink into the land. Or if such an estate in a rent, &c. be limited to a man and hi heirs, and he die without devising the rent, and without heirs, *vide ante*, 589, it seems that his executors or administrators would not be entitled to the rent, but that it would sink into the land. *Vide* 3 P. Wms. 33 [B].

When a rent-charge ceases, the remedies for recovering it cease also.

If an annuity or rent charge *pur auter vie*, cease for want of proper words of limitation, it is clear that the specific remedies which the law has provided, independently of the contract of the parties, for recovering the annuity or rent-charge, during its continuance as an annuity or rent-charge, in the strict sense of the word, must cease also: but whether, in a court of law, any collateral security, such as a covenant, bond, judgment, &c. for paying the annuity or rent-charge to the grantee, his executors, administrators, and assigns, during the life of the nominee, be affected by the determination of the grant for want of proper words of limitation, is not so certain; although the prevailing opinion is, that the only remedy the executors or administrators have in such a case, is, in a court of equity. [Mr. Sanders thinks that if the rent should determine as a rent, it might be distrained for under the covenant 2 Us. and Tr. 306 n. *Allerton* v. *Eden*, Noy, 5, 6, Vin. Ab. 393 pl. 11. and see *Cupit* v. *Jackson*, 13 Pri. 721. *Ed.*]

How a rent *pur auter vie* may be in effect limited to executors and administrators.

To prevent all doubt, when it is the grantee's intention that an annuity or rent-charge *pur auter vie* should form part of his personal estate, it should be granted to him, his executors, administrators, and assigns, for ninety-nine, or any other sufficient number of years, if the nominee or the nominees or the survivors or survivor of them, should so long live [*See post* 628.]

The reason of stating when the writ of annuity, and when the action of debt lies.

Although the action, by a writ of annuity, is at present out of use, 1 Tidd's Prac. 4, 7th ed. being superseded by the action of debt or covenant, *where these remedies can be pursued*, yet it seems proper to state, when a writ of annuity, and when an action of debt lies, in order to give a general view of the subject; and because there are cases in which no other action besides the writ of annuity lies.

Where the writ of annuity shall not be had.

If a rent-charge be granted to A and B and their heirs, and A distrain the beasts of the grantor, and he sue a replevin, and A avow for himself, and make conusance for B, and A die and B survive him; B shall not have a writ of annuity; for in that case the election and avowry for the rent by A bars B of any election to make it an annuity, although he assented not to the avowry. Co. Litt. 146, a. In all cases, where the rent-charge is apportioned by act in law, the writ of annuity fails; for if the grantee should bring a writ of annuity, he must ground it upon the grant by deed, and then he must bring it for the whole. For as in the case of dower, *ante*, 580, if the heir should bring annuity for the remainder of a rent-charge, after the widow had been endowed of a third, it would not be according to the deed of grant, for either the whole must be a rent-charge, or the whole an annuity. Co. Litt. 144, a.

For the arrears of an annuity in fee, in tail, or for life, so long as the estate of freehold has *continuance*, there lies no action, but only a writ of annuity against the grantor, his heirs, or successors, provided they be included in the obligation or grant. Com. Dig. *Debt.* (A. 7). But if an annuity be granted for years, it seems doubtful whether an action of debt lies for it during the continuance of the term. In *Browne* v. *Pendlebury*, Cro. Eliz. 268 (4), it was held, that debt lies upon a grant for years during the term, because it is by the deed as a *contract*. So in *Bendloss* v. *Phillips*, Cro. Eliz. 895, Yelverton J. held, that an action of debt lies for an annuity for years during its continuance; and he took this difference, that where a rent for years is granted originally, and where a rent or annuity is granted in fee, and out of it a grant is made for years, there no action of debt lies during the years. And of that opinion was Fenner, J. as to the last point, but he doubted of the first; wherefore *cæteris justiciariis absentibus, adjournatur*. However in *Tomfield's* case, Cro. Eliz. 3 (7). it was agreed by *all* the justices in the common pleas, that the grantee of an annuity for years cannot have an action of debt for the arrears, during the term in the annuity. In *Lucas* v. *Fulwood*, 1 Buls. 15, in an action of debt for an annuity for years, Yelverton, J. upon the first moving, conceived the action of debt to be well brought; and he said, so if lessee for years grants an annuity to another for years, an action of debt well lieth for it. But Williams, J. said, the plaintiff here is not to have an action of debt, if the term do continue, but if the term be determined, an action of debt then lies by him. And so is the 9 H. 7, fol. 16, 17, where it is held, that if an annuity be granted to one for years, as long as the term continues, a writ of annuity lies for the same, but when the lease is determined, an action of debt lies for the same, and so is the old book of entries, fol. 151, in debt for an annuity; but here the plaintiff has failed in his action, for he has brought his action of debt, and declares for an annuity; this is not good; but the declaration is defective herein in matter of substance; and this clearly is not aided by any statute: and of this opinion was Yelverton afterwards; and therefore judgment was given for the defendant. Brooke says, that as long as the annuity continues, a writ of annuity lies, and not a writ of debt, although the annuity should be only for years. Bro. Abr. *Annuitie*, pl. 29. And yet he observes. pl. 46, the executors shall have a writ of debt of the arrears of an annuity incurred in the life time of the testator: and so far an action of debt lies for an annuity whilst it continues; and it shall be in the *detinet*, where the writ of annuity is in the *debet*. But where a man devised an annuity, charged on his real estate, to

For an annuity, strictly so called, there only lies a writ of annuity during its continuance. But for an annuity for years, it has been held, that an action of debt lies during its continuance; yet the better opinion is contrary.

his sister and heir at law, a feme covert, and a portion for her daughter, and by codicil said, on condition that they release all right, &c. it was held, that debt cannot be maintained for the arrears of the annuity incurred during the coverture, the sister being dead, and not having released. *Ackerly* v. *Vernon*, Fortescue, 188.

Debt does not lie at the common law, nor by stat. 8 Ann. c. 14, for the arrears of an annuity or yearly rent devised, payable out of lands to A during the life of B, to whom the lands are devised for life, B paying the same thereout, so long as the estate of freehold continues.

On this point, the case of *Webb* v. *Jiggs* and *Martha* his wife, 4 Maule & Selw. 113, is too important, and has too much law, both in the argument and in the judgment of the court, to be passed over by merely stating the point determined: there, in an action of debt the plaintiff declared that one *J. Webb* was seised in fee of certain lands at Iver, in Buckinghamshire, and being so seised by his will duly executed according to the statute, gave and bequeathed to the plaintiff an annuity or yearly rent of 10*l.* to be issuing and payable yearly and every year during the life of the defendant *Martha*, out of the said lands; and also gave and bequeathed the said lands to the said *Martha* and her assigns for her life, she paying thereout, in manner aforesaid, to the plaintiff the said annuity or yearly rent, and afterwards the said *J. Webb* died, and his will was duly proved, whereupon the said *Martha* became seised as of freehold for her life of the said lands, and the plaintiff became entitled to the said annuity or yearly rent, and afterwards the said *Martha* married the other defendant *Jiggs*, whereby they became seised of the lands as of freehold in right of the said *Martha* for her life, and so the plaintiff avers that while they were so seised, and were the pernors of the profits thereof, 75*l.* of the said annuity or yearly rent, for seven years and a half, ending on the 25th of March, 1814, became due from the defendants as the pernors, and still is in arrear and unpaid, whereby actio accrevit, &c.

Demurrer. Joinder.

Richardson, in support of the demurrer, made three points, 1st, that debt does not lie in this case at the common law. And he took this distinction, that if an annuity be granted *for years*, debt lies for the arrears, [*sed vide ante*, 597,] so if for life, or pur autre vie, *after the estate determined*, debt lies. But by the common law debt does not lie for the arrears of a rent or annuity in fee, fee tail, or for life, *so long as the estate of freehold has continuance*. And for this he cited *Ognel*'s case. 4 Rep. 48. b. Com. Dig. *Debt*, (A. 6, 7.) ibid. (B), also 1 Rol. Abr. 594 (G), pl. 1, to the same effect. And the reason given is, because the law will not suffer a real injury to be remedied by an action merely personal. 3 Bl. Com. 232. Whether this reason be satisfactory or not, it is enough that the rule of law is so; and the party is not without his remedy, for an assize of *mort d'ancestor*, Fitzh. N. B. 195, or novel

disseisin, Co. Litt. 178, will lie, or the writ *de consuetudinibus et servitiis*, or the writ of *cessavit*. Co. Litt. 208. In many cases, indeed, according to Litt. sec. 219, "the grantee of a rent-charge may choose whether he will sue a writ of annuity against the grantor, or distrain for the rent behind;" and Lord Coke says upon that, Co. Litt. 144, b. "the grantee hath election to bring a writ of annuity and charging the person only, to make it personal, or to distrain upon the land and to make it real." But that is to be understood of a rent granted by deed, which charges the person, and for which a writ of annuity doth lie; but not as in the case at bar, where there is not any charge upon the person. 2dly, If debt does not lie at the common law, neither does it by stat. 8 Anne, c. 14, s. 4. For that statute applies only to cases between landlord and tenant, for rent arrear upon a *lease* or *demise* for life or lives, which this is not. Admitting that a lease may be created by will, 2 Leon. 33. *Machel* and *Dunton*'s case, as if the land were devised to one for life, reserving a rent, and the reversion to another, such a devise might operate as a lease, and give the reversioner the remedy of this statute; yet here is neither lease or demise, nor lessor or grantor, neither is there any privity between the parties. 3dly, This action, supposing it maintainable at all, doth not lie against husband and wife, but against the husband only; which is plain from this consideration, that during the husband's life he has the whole pernancy of the profits, and for the rent arrear during his life, his executors, and not the wife, shall be chargeable, though the land itself is chargeable. Thus in *Ognel*'s case, 4 Rep. 49, b. one was grantee for life of a rent out of the moiety of a manor, of which moiety a man was seized *jure uxoris*. The rent was in arrear, and grantee died, and his executors brought debt against the husband only for the arrearages. And it was resolved, that by the death of the grantee, the grant for life was turned into the nature of a debt; and forasmuch as the husband took the profits of the land charged with the rent when in arrear, he only without his wife shall be charged in an action of debt; and after his death, debt lies against his executors. So Com. Dig. *Baron* and *Feme* (Y), "Debt lies against husband alone for rent incurred during the coverture, upon a lease to the wife *dum sola*," and cites Thoms. Entr. 117.

Gifford contrà, admitted the rule of the common law to be against the bringing an action of debt so long as the freehold continues; but that, he said, was only where the freehold is conveyed at the common law, and not where it is by devise, which is by the statute of wills; for to such conveyances none of the writs of assize or other real writs apply. Therefore the plaintiff in this case will be without remedy, if he

may not maintain this action. And if it were necessary, in order to maintain it, that there should be a charge on the person, here the defendant is charged with the payment of the rent, for the land is devised to her, *she paying thereout to the plaintiff the said rent*, which charges the person as well as the land. And what Lord Holt said in *Ewer* v. *Jones*, 2 Ld. Ray. 937. 2 Salk. 415. 6 Mod. 27. is decisive in favour of this action, and he said that he made no question of it. 2dly, This action is maintainable by the statute of Anne, for it is within the mischief, and therefore within the intent of the statute, though the words thereof be only *lease* or *demise*. And oftentimes the courts have extended the provisions of a statute to cases which were not within the letter, if they were within the mischief. Plowd. 467. For instance, the statute 9 Ed. 3, c. 3, which gives an action against executors, is extended by equity to administrators, because they are in the same degree. So the statute of Glocester gives an action of waste against tenant for life or *years*; yet by the equity thereof it lies against him who holds but for a year, or for twenty weeks; for though this be out of the words of the act, it is within the intent. Plowd. 467. And by parity of reason, the court ought to extend the remedy of this statute to the present case, it being plainly the intention of the statute to give an action of debt for rent arrear, during the continuance of any estate for life or lives; and therefore though the letter says upon a *lease* or *demise*, yet by the equity, it shall be intended *by will* also. 3dly, Although the husband might have been sued alone, yet may the wife be joined: in like manner as for rent upon a lease for years or life, made to husband and wife, an action lies against both, because it is for the wife's benefit. 1 Rol. Ab. 348, (X.) So here the freehold is in the wife jointly with her husband, and it is for her benefit, and after the husband's death she could not waive it.

Richardson in reply said, there was no reason why the common law writs should not lie for the recovery of the rent in this case, as well as upon a conveyance at the common law, so far at least as they were applicable to a taking by purchase and not by inheritance: as novel disseisin, where the writ shall be general, *that unjustly, &c. he hath disseised him of his freehold, &c.* For when a statute, as the statute of wills, gives a new right, it gives all such remedies for the recovery of that right, as by law may be applied to it. And a rent, whether created by will or grant, will pass by a common recovery, &c. which shews that it may be the subject of a real action. And notwithstanding what fell from Lord Holt, in *Ewer* v. *Jones*, there is no instance of an action lying for a legacy chargeable on land. *Deeks* v. *Strutt*, 5 T. R. 690, shews that it will not lie for a legacy generally; and the reason there

assigned holds equally where the legacy is charged on land. Besides, this is not a legacy, but a rent. And as to this action being within the equity of the statute of Anne, such a construction of an act of parliament might well obtain formerly, when the legislature was used to express its intention sparingly, in a few words or sentences only; but in modern times, since it has become the practice to express such intention fully and at large, so that it may be found within the four corners of the act of parliament, it is unnecessary, and would be highly dangerous to extend it by any intendment; and therefore that doctrine is properly exploded. Upon the last point he admitted, that according to the authorities it rather seemed that the action would lie both ways.—*Cur. adv. vult.*

Lord *Ellenborough*, C. J. on this day delivered the judgment of the Court. After stating the pleadings, his lordship said, This demurrer was argued at our sittings before Hilary term in Serjeant's Inn Hall, when it was contended on the part of the defendants, in support of the demurrer, that at the common law an action of debt will not lie for a rent or annuity in fee, in tail, or for life, while it continues a freehold interest. And this position was not denied on the other side, but it was contended that it applied only to legal common law estates, and not to devises by will. And what appears to have been said by Holt, C. J. in *Ewer* v. *Jones*, reported in 2 Ld. Ray. 937. Salk. 415; and 6 Mod. 26, 27, was relied on, viz. "That a devisee may maintain an action at common law against the terre-tenant for a legacy devised, payable out of land; for where a statute, as the statute of wills, 32 & 34 H. 8, gives a man a right, he shall have an action to recover it of consequence; because his right is created by act of parliament." But what Lord Holt is there stated to have said, does not reach this objection; it is said only generally of a legacy or sum of money, not of an annuity or rent for life, in tail, or in fee; and it is to be observed, that in the case of a legacy payable out of land, unless the legatee had his remedy by action of debt, founded on the statute, he would be wholly without remedy in the courts of common law; whereas the annuitant would not be remediless, but would have an assise to recover his annuity. See *Brediman's* case, 6 Rep. 56, b. And no authority has been stated where the general rule of law, which excludes the action of debt as a remedy for rent or annuity in fee, in tail, or for life, has been confined to annuities or rents created by common law conveyances, as contradistinguished from annuity or rents created by devise; nor does there seem any reason for making the distinction. It was next contended on behalf of the plaintiff, that this case was within the provisions of the 4th section of stat. 8 Ann. c. 14. "for the better security of rents, and to prevent frauds by tenants;" but the language both of the title of the act, and of the enacting clause, shews that the legislature contemplated only the case of

rent due from a tenant, holding by lease or demise under his landlord, which is not this case, this being the case of two distinct and independent devises, of the land to one person for life, and to another of an annuity issuing out of the same, for the life of the devisee of the land, created by the will of one and the same devisor, and without any such original privity between the devisee of the land charged with the annuity, and the devisee of the annuity charged thereupon, as subsists between a lessor and his lessee. We are therefore of opinion, that the action of debt is not maintainable on the ground of this stat. of Ann. c. 14, any more than it is upon the other ground already considered. [A like decision was made in the case of *Kelly* v. *Clubbe*, 3 Brod. & B. 130; and although it did not appear in the declaration that the grantor had a freehold in the premises in question, it must be taken for granted, where nothing to the contrary appears; and, if so, was held of itself to be a sufficient bar to the action.—*Ed.*]

A writ of annuity does not lie after the determination of an annuity. But an action of debt lies.

It is an invariable rule, that the writ of annuity only lies whilst the annuity continues payable; so that if the annuity be extinguished by act of the party, or by operation of law, before the writ is purchased, or pending the writ, there the writ of annuity is gone. Bro. Abr. *Annuitie*, pl. 32. Bro. Abr. *Dette*, pl. 145. 2 Vin. Abr. 516, pl. 8.

Seisin of a rent.

It was not sufficient at the common law to support a distress for rent, that such rent was properly reserved or granted, but it was also necessary that the party distraining should have a seisin of the rent, without which, there was no privity between him and the tenant; and therefore before the statute 4 Anne, c. 16, had rendered attornment in future unnecessary, it was requisite, upon the grant of a rent-charge or rent-service by a common law conveyance, that the tenant should attorn to the grantee, in order to give him a seisin in law of the rent, without which the grantee could not distrain. Co. Litt. 309. 311. And even this seisin in law was not sufficient to support an assize, or other real action for the rent, for which actual seisin, by receipt of a part of the rent, was required. Litt. s. 235. This latter seisin was not however necessary for a distress; because, except in a very few cases (such as a seisin of encroachment tortiously gained by coercion of distress), the tenant was not permitted to dispute the actual seisin of his lord in a replevin. *Bevill*'s case, 4 Co. 9. a. 11. b. But the doctrine of seisin, with relation to a distress for rent, has become nearly obsolete since the statute 4 Anne, c. 16. s. 9, by which it is enacted, "That from and after the first day of Trinity term, one thousand seven hundred and six, all grants or conveyances thereafter to be made by fine or otherwise of any manors or rents, or of the reversion or remainder of any

By 4 Anne, c. 16, grants and conveyances are good without attornment of tenants;

messuages or lands, shall be good and effectual to all intents and purposes, without any attornment of the tenants of any such manors, or of the land out of which such rent shall be issuing, or of the particular tenants upon whose particular estates any such reversions or remainders shall and may be expectant or depending, as if their attornment had been had and made." And by sec. 10, it is "Provided, nevertheless, that no such tenant shall be prejudiced or damaged by payment of any rent to any such grantor or conusor, or by breach of any condition for non-payment of rent, before notice shall be given to him of such grant." There are however some cases in which the seisin of a rent may still come in question: as in a distress for an ancient rent-charge, created before that act by a conveyance taking effect by the principles of the common law, and not by the statute of uses. For the statute 32 Hen. VIII. c. 2. s. 4. enacts, "That no person nor persons shall hereafter make any avowry or cognizance for any rent, suit, or service, and alledge any *seisin* of any rent, suit, or service, in the same avowry or cognizance in the possession of his or their ancestors or predecessor or predecessors, or in his own possession, or in the possession of any other whose estate he shall pretend or claim to have, above *fifty* years next before the making of the said avowry or cognizance." Now, a rent-charge, if created before the first day of Trinity term, 1706, is not within the statute 4 Anne, c. 16. *Long* v. *Buckeridge*, 1 Stra. 106: nor is any *rent-charge* within the statute 11 Geo. II. c. 19, entitling the distrainor to avow generally for rents, without alleging a seisin thereof. *Lindon* v. *Collins*, Willes, 429. *Bulpit* v. *Clarke*, 1. New Rep. 56. And therefore such ancient rent-charge still continues under the operation of the act 32 Hen. VIII. c. 2. But, as it has been determined, that this statute does not require an actual seisin by receipt of the rent, but only a seisin in law; *Bevil*'s case, 4 Co. 10. b.; and see *Fawkner* v. *Bellingham*, Hetley, 36. *Foster*'s case, 8 Co. 64; it would perhaps be satisfied by shewing any act or assent on the part of the tenant, which would have amounted to an implied attornment at the common law. *Anonymous*, 3 Leon. 17. *Bevil*'s case, 4 Co. 12. Bradby on Distresses, 32.

but not to prejudice tenants before notice of grants.

However, even before the 4 Anne, c. 16, if a rent were originally granted by way of use, under the 27 Hen. VIII., attornment was unnecessary: for by the statute of uses, 27 Hen. VIII. c. 10. s. 4. after reciting "And where also divers persons stand and be seised of and in any lands, tenements, or hereditaments, in fee simple or otherwise, to the use and intent that some other person or persons shall have and perceive yearly to them, and to his or their *heirs*, one annual rent of x. li. or more or

By 27 Hen. 8. c. 10, use in a rent executed into legal estate, for which a distress may be made without attornment, independently of 4 Anne, c. 16,

although no power of distress, &c. be given by the deed.

less, out of the same lands and tenements, and some other person one other annual rent, to him and his assigns for term of life or years, or for some other special time, according to such intent and use as hath been heretofore declared, limited and made thereof. By the *fifth* section it is enacted, "That in every such case the same persons, their heirs, and assigns, that have such use and interest, to have and perceive any such annual rents out of any lands, tenements, or hereditaments, that they and every of them, their heirs and assigns, be adjudged and deemed to be in possession and seisin of the same rent, of and in such like estate as they had in the title, interest, or use of the said rent or profit, and as if a sufficient grant, or other lawful conveyance had been made and executed to them, by such as were or shall be seised to the use or intent of any such rent to be had, made, or paid, according to the very trust and intent thereof; and that all and every such person and persons as have, or hereafter shall have, any title, use, and interest in or to any such rent or profit, shall lawfully distrain for non-payment of the said rent, and in their own names make avowries, or by their bailiffs or servants make cognisances and justifications, and have all other suits, entries, and remedies for such rents, as if the same rents had been actually and really granted to them, with sufficient clauses of distress, re-entry, or otherwise, according to such conditions, pains, or other things limited and appointed, upon the trust and intent for payment or surety of such rent." See *Cromwell's* case, 2 Co. 72. b. Gilb. Uses, 200.

Cestui que use of a fine of a rent &c. of which there had been attornment, may distrain without another attornment, independently of 4 Anne, c. 16.

So under the statute of uses generally, it was resolved in Sir *Moyl Finch's* case, 6 Co. 68. a. Co. Litt. 309. b. that if, after attornment, a fine be levied of a reversion of lands, or of a rent to a man and his heirs, to the use of another and his heirs, as by the statute of uses, the use and possession come instantly together, and there being consequently no intervening time for the conusee of the fine to bring either a *quid juris clamat*, or a *quem redditum reddit*, for or to receive an attornment to perfect his possession, the *cestui que use* and his heirs should, notwithstanding, distrain, and have the same advantage as if the conusee's possession had been perfected by attornment and seisin. This construction of the statute was a great strain and violence upon the true reason of law, because it establishes, that a conveyance, which in reason could not be good without attornment, should be sufficient; because it could not have an attornment, which was necessary to make it sufficient. Vaugh. 51. And so, as Lord Coke says, for the same cause, if a man, perfectly seised of a seigniory, rent, reversion, or remainder, bargain and sell the same by deed, indented and inrolled according to the statute,

Bargainee of a rent, &c. of which the bargainor is pro-

the bargainee may distrain without attornment by virtue of the statute. But Lord Coke admits, that if the conusee of a fine, before any attornment had been made, by deed intended and inrolled, bargained and sold a seigniory, &c. to another, the bargainee should not distrain, because the bargainor could not distrain for want of attornment. *Et sic de similibus;* for *nemo potest plus juris ad alium transferre quam ipse habet.* Co. Litt. 309. b. So, if before the statute of Anne, the use of a fine of a fee farm rent derived from the crown before the 22 Car. II. c. 6, were declared to the conusee himself, as he would be in by the common law, although the rent would pass by the fine, yet it did not enable him to distrain without attornment. *Long* v. *Buckeridge*, 1 Str. 106, 111.

perly seised, may distrain without attornment independently of 4 Anne, c. 16.

But it is otherwise if no attornment has been made, or the use of the fine be declared to the conusee himself.

The executors of tenant for life of a rent-charge, and of tenant *pur auter vie*, after the death of *cestui que vie*, might bring *debt* to recover the arrears of such rents by the *common law*. And although the contrary might, at first view, be inferred from the generality of the preamble of the statute 32 Hen. VIII. c. 37, yet these words have in construction been restricted to mean, tenants *pur auter vie*, so long as *cestui que vie* lives. Co. Litt. 162. a, b. *Ognel's* case, 4 Co. 49. b. Wms. n. 2. Saund. 282. (1). Hargr. n. Co. Litt. 162. a. (4). 162. b. (1). *Hoole* v. *Bell*, 1 Ld. Raym. 172. But they could not have distrained, which now they may do by force of that statute, which is as follows:

Executors of tenant for life and *pur auter vie*, of a rent-charge, may have *debt*, or may distrain for arrears incurred in his life-time.

"*For Recovery of Arrearages of Rents by Executors of Tenant in Fee-simple* [&c]. 32 Hen. 8. c. 37.

"Forasmuch as by the order of the common law, the executors or administrators of tenants in fee-simple, tenants in fee-tail, and tenants for term of lives, of rent-services, rent-charges, rent-secks, and fee-farms, have no remedy to recover such arrearages of the said rents or fee-farms as were due unto their testators in their lives, nor yet the heirs of such testator, nor any person having the reversion of his estate after his decease, may distrain, or have any lawful action to levy any such arrearages of rents or fee-farms due unto him in his life as is aforesaid; by reason whereof the tenants of the demean of such lands, tenements, or hereditaments, out of the which such rents were due and payable, who of right ought to pay their rents and farms at such days and terms as they were due, do many times keep, hold, and retain, such arrearages in their own hands, so that the executors and administrators of the persons to whom such rents or fee-farms were due, cannot have or come by the said arrearages of the same, towards the payment of the debts and performance of the will of the said testators: For remedy whereof, be it enacted by the authority of this present parliament, That the executors and administrators of every such person or persons, unto

Vaughan, 39. 2 Roll, 370. 382. 457. Dyer, 375. pl. 20.

Vin. Ab. V. 18, 542. Executors or administrators.

of tenants in fee-simple, fee-tail, and for life of rent-services*, rent-charges, rent-secks, and fee farms, may have an action of debt, or may distrain for arrears due in the testator's life-time.

whom any such rent or fee-farm is or shall be due, and not paid at the time of his death, shall and may have an action of debt for all such arrearages, against the tenant or tenants that ought to have paid the said rent or fee-farms so being behind in the life of their testator, or against the executors and administrators of the said tenants; and also furthermore, it shall be lawful to every such executor and administrator of any such person or persons unto whom such rent or fee-farm is or shall be due, and not paid at the time of his death as is aforesaid, to distrain for the arrearages of all such rents and fee-farms, upon the lands, tenements, and other hereditaments, which were charged with the payment of such rents or fee-farms, and chargeable to the distress of the said testator, so long as the said lands, tenements, or hereditaments continue, remain, and be in the seisin or possession of the said tenant in demean, who ought immediately to have paid the said rent or fee-farm, so being behind, to the said testator in his life, or in the seisin or possession of any other person or persons claiming the said lands, tenements, and hereditaments, only by and from the same tenant by purchase, gift, or descent, in like manner and form as their said testator might or ought to have done in his life-time, and the said executors and administrators shall, for the same distress, lawfully make avowry upon their matter aforesaid.

1 Leon. 302. Cro. El. 805. Cro. Car. 471. 2 Vern. ca. 550.

Redemption money paid in Wales and the Marches. 2 Leon. 33. Vaugh. 415.

" II. Provided alway, that this act, nor any thing therein contained, shall not extend to any such manor, lordship, or dominion in Wales. or in the Marches of the same, whereof the inhabitants have used, time out of the mind of man, to pay unto every lord, or owner of such lordship, manor, or dominion, at his or their first entry into the same, any sum or sums of money, for the redemption and discharge of all duties, forfeitures, and penalties, wherewith the said inhabitants were chargeable to any of their said lords, ancestors, or predecessors, before his said entry.

The husband's remedy for rent due in the right, and in the life of his wife. Co. pl. f. 119. Vaugh. 38. 4 Co. 51. Co. Lit. 351. Goldsb. 30. pl. 1.

" III. And further be it enacted by the authority aforesaid, That if any man which now hath, or hereafter shall have, in the right of his wife, any estate in fee-simple, fee-tail, or for term of life, of or in any rents or fee-farms, and the same rents or fee-farms now be, or hereafter shall be due, behind and unpaid in the said wife's life; then the said husband, after the death of his said wife, his executors, and administrators, shall have an action of debt for the said arrearages against the tenant of the demean that ought to have paid the same, his executors or administrators; and also the said husband, after the death of his said wife, may distrain for the said arrearages, in like manner and

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* *i. e.* payable to the lord of the seigniory, or to a person having an immediate or remote reversion in the lands. Com. Dig. *Rent*, (C. 1.)

form, as he might have done if his said wife had been then living, and make avowry upon his matter as is aforesaid.

"IV. And likewise it is further enacted by the authority aforesaid, That if any person or persons which now have, or hereafter shall have, any rents or fee-farms for term of life or lives, of any other person or persons, and the said rent or fee-farm now be, or hereafter shall be due, behind, and unpaid in the life of such person or persons for whose life or lives the estate of the said rent or fee-farm did depend or continue, and after the said person or persons do die; then he unto whom the said rent or fee-farm was due in form aforesaid, his executors or administrators shall and may have an action of debt against the tenant in demean, that ought to have paid the same when it was first due, his executors and administrators, and also distrain for the same arrearages upon such lands and tenements out of the which the said rents or fee-farms were issuing and payable, in such like manner and form as he ought or might have done, if such person or persons by whose death the aforesaid estate in the said rents and fee-farms was determined and expired, had been in full life and not dead; and the avowry for the taking of the same distress to be made in manner aud form aforesaid."

The remedy for a rent, the estate whereof dependeth upon another's life being dead.
1 Anders. 47.
3 Leon. 59.
5 Co. 118.
7 Co. 39.
2 Leon. 153.
Moor, 625
Pl. 858.
Co. Lit. a. 162.

By the common law, the heirs, executors or administrators of a man seised of a rent-service, rent-charge, rent-seck, or fee-farm, in fee-simple, or fee tail, had no remedy for the arrears incurred in the life of the owner of such rents. But now, by the above statute, a double remedy is given to the executors or administrators, either to distrain or to have an ction of debt. Co. Litt. 162 a. [and see *Cupit* v. *Jackson*, 1 M'Clell. and Yo. 495. 13 Pri. 721, s. c.] And it seems that an executor of an executor is within the equity of the act. Off. Ex. 258. So, at common law, if a feme sole, seised of a rent in fee, &c. which was behind and unpaid, married, and the rent became behind again, and the wife died; the husband by the common law, could not have the arrears grown due before the marriage; but for the arrears become due during the coverture, the husband might have an action of debt by the common law. But now this statute gives the husband the arrears due before marriage, and a double remedy for the same, that he may distrain for the arrears grown due during the coverture. So it gives him that which he could not have before, and further remedy for that which the common law gave him; and so it has been adjudged. *Ognel's* case, 4 Co. 51. a. *Sharp* v. *Pool.* N. Bendl. 263. pl. 273. Co. Litt. 162, b.

Remedy for executors at common law for arrears incurred in testator's life time.

For husband for arrears in right of his wife.

Tenant for life of a rent-charge confessed a judgment, which was extended by elegit; tenant for life died, conusee distrained, and in replevin avowed for the arrears incurred in the life of tenant for life; and upon demurrer the distress was held to be bad, and not warranted

Conusee of tenant for life of a rent-charge, not

within the statute.

by the statute. 1. Because the case of the conusee is not enumerated in it. 2. Because he comes in the *post*, and not under the tenant for life. Bull. N. P. 57. But he might have debt. *Pool* v. *Neal*, Sid. 28, 29. 18 Vin. Abr. 545.

Executor of grantee for years not within the statute.

But the executor of a grantee of a rent-charge for years, determinable on a life or lives, is not within this statute. *Pool* v. *Duncomb*, Bull. N. P. 57. Nor does the act extend to a quit rent issuing out of copyholds. *Appleton* v. *Doiley*, Yelv. 135. *Sed vide* Carth. 91. where by Eyre, J. this point is doubted. 2 Bac. Abr. 282 *margine. Debt* (C). Lord Coke says, if a man make a lease for life, or a gift in tail, reserving a rent, this is a rent service within the statute; Co. Litt. 162. b. from whence it may be inferred, that he thought that a rent reserved upon a lease for years was not within it: and I apprehend, says Mr. Justice Buller, N. P. 57, that it is not, for the landlord is not tenant in fee, fee tail, or for life, of such a rent; and it is the executors of such tenants only who are mentioned in the act. However in trespass, where it appeared the defendant had distrained the plaintiff's goods for rent due to his testator upon a lease for years, Lord Chief Justice Lee held it to be within the statute, and the defendant obtained a verdict. *Powel* v. *Killick*, at Westminster, M. 25 Geo. II.

Distress the best remedy,

The distress is a more plain and certain remedy, than the action of debt; for the action of debt must be brought against the persons who took the profits when the rent became behind, or against their executors or administrators; but the distress may be taken upon the land be it either in the tenant's own hands, or in the hands of any other who claims by or from him (that is, by interpretation, under him) by purchase, gift or descent. And these words, *claiming only by and from him*, are to be understood claiming only from or under him by purchase, gift, or descent; and not paramount or above him; as the lord by escheat claims not under the tenant by purchase, gift, or descent, but by reason of his seigniory, which is a title paramount. Co. Litt. 162. b. For other cases not within the statute on a like ground, see Cro. Eliz. 332.; 1 Leon. 302; 2 Vern. 612. See also on the extent of this branch of the statute, *Edridge's* case, 5 Co. 118. [But a court of equity will raise the arrears by sale or mortgage, although there is a legal remedy under the Stat. of Hen. viii. *Cupit* v. *Jackson*, *abr. supra. Ed.*]

because it may be made on those claiming under the grantor.

A power of distress follows the land in the hands of any common person claiming under the grantor of the rent-charge.

Therefore, wherever a rent-charge can be distrained for, the remedy follows the land in the hands of any succeeding tenants claiming under or through the person who granted the rent-charge; or if the tenant be dead, the goods of the deceased may be distrained in the hands of his executor or administrator for the rent accrued before and after his death Bradby, 112, *Braithwaite* v.

Cooksey, 1 H. Bla. 465. Thus, in replevin, the defendant avowed for a rent-charge due in the year 1660, and afterwards he distrained, and avowed for other part of the rent-charge due a year before viz. *anno* 1659; and this distress was taken of the chattels of another person, who was then tenant of the lands: and upon demurrer, the question was, whether he was estopped to avow for the arrears of the rent-charge before the year 1660? And it was adjudged that he was not; but that if he had given an acquittance to the last day of payment, he could not claim the rent due before, because that was his voluntary act and deed, and he shall be estopped to claim against it; but in an avowry for rent, he may avow for all or part, at his pleasure; and the first avowry shall not bar him from avowing for rent before. *Palmer* v. *Stabick*, Sid. 44. pl. 1. 9 Vin. Abr. 157. pl. 24. So in another statement of this case, incovenant against an executor for the arrears of a rent-charge due long before; Powell, Justice, said, an avowry for the arrears of a rent-charge in 1679 is no estoppel to bring covenant for the arrears in 1678. And he said, there is a diversity, where the acquittance for the last rent is under the plaintiff's hand and seal, and where it is under his hand only; for in the first case it is an estoppel, in the latter it is only evidence; *Fountain* v. *Gnales*, Comb. 59; but it is strong presumptive evidence that the former rents have been regularly paid. Phillips on Evidence, 155, 5th ed. Gilb. on Debt, page 434, ed. 1760. B. 3. c. 2. 1 Selw. N. P. 598, 5th ed. So if a man give a receipt in full of all demands, it is presumptive evidence that there were no debts standing out; and the other party will be allowed to prove the contrary: but how he is to prove a negative, viz. that the former rent has not been paid, is not stated. However, if the receipt in full of all demands be under hand and seal, the presumption is so strong, that the law admits of no proof to the contrary. Gilbert on Evidence, 158, 4th ed. 142. Sedgw. ed. And in *Palmer* v. *Stanage*, 1 Lev. 44. apparently the same case as *Fountain* v. *Gnales*, Foster, Chief Justice, said, that the avowry for rent due at a latter day, cannot be a discharge of rent due at a former day, any more than a recovery in an action of debt for rent due at a latter day, can be a bar in an action of debt for rent due at a former day.

A rent-charge may be distrained and avowed for, although there has been a previous distress and avowry for rent becoming subsequently due

or an action of covenant may be brought;

but an acquittance under hand and seal is an estoppel.

A recovery in an action of debt for rent due at a latter day, is no bar in an action of debt for rent due at a former day.

So if a man grant a rent-charge to A, for the life of B, and let the lands to C for life, the remainder to D in fee; the rent is behind for many years; B dies, and afterwards C dies; A may distrain D in remainder for all the arrears, by the latter branch of the statute 32 Hen. VIII. And this diversity arises from the difference between the former branch and this latter; and which was so expounded and adjudged in *Edridge's* case, 5 Co. 118; the latter clause giving the lesser estate the greater remedy.

Remainderman claiming under grantor of a rent-charge, subsequent to the grant liable to a distress.

Surrenderor liable to a distress for rent-charge granted by surrenderee.

So if a tenant for life grant a rent-charge, and afterwards surrender his estate to the lessor; although the estate charged be merged, and the lessor is not in by him, yet he shall hold it charged. Co. Litt. 185. a. 338. b. 233. b. Preston on Merger, 447, 456, 471.

Lessee of the whole lands under several lessors, liable to a rent-charge granted by one of them.

So if a rent be granted out of two parts of certain land, and afterwards a lease be made of the two parts to A; and the other part also comes to A, by another lease from him who has the third part, the cattle of the lessee may be taken for this rent. 1 Roll. Abr. 670. pl. 34. *Newman* v. *Moore*, Hob. 80, 4th ed. So where a stranger claims under the grantor, after the grant of a rent-charge, his cattle are liable to a distress: as the cattle of a lessee, where the demise was after the grant. Com. Dig. *Distress*, (B. 2.)

Either of several tenants of lands subject to a rent-charge, may be distrained; or any part of the lands, if they lie in several counties.

So if a rent-charge issue out of land, which is in the hands of several men, a distress may be taken for the whole rent upon the possession of one; for all the rent issues out of every part. 1 Roll. Abr. 671. pl. 12. So if a rent-service or a rent-charge issue out of land lying in several counties, a distress for the whole may be taken in one county. 1 Roll. Abr. 671. pl. 10 and 11.

What goods of a stranger are exempted from a distress.

To exempt the goods even of a stranger from a distress for rent, it is necessary that they should be on the premises demised under peculiar circumstances: as for the purpose of trade, in which case, on account of the public advantage of trade, they are privileged from distress; or the place in which they are found should be itself privileged for the like reason of general benefit; as a market, fair, or public inn. Bradby. 115. 208. 3 Bla. Com. 8. Gilb. Distresses, 39. 3d ed. *Gorton* v. *Falkner*, 4 Term. Rep. 565. [See also *Gisborn* v. *Hurst*, Salk. 250. *Simpson* v. *Hartop*, Willes 515, and *Gilman* v. *Elton*, 3 Brod. and B. 75. J.B. Moore, 243: S.C. in which last case the goods in the hands of a factor were held on this account to be privileged from distress. And see *Thompson* v. *Massiter*, 1 Bing. 283. *Ed.*]

Goods in the possession of the law, privileged from a distress.

It is a rule, that neither the goods of the tenant or a stranger can be distrained for rent, if they are already in the custody of the law; as if taken damage feasant, or under an execution, unless such execution be already satisfied: *Harwell* v. *Barwell*, Sir W. Jones, 456: because in these cases, an interest in the goods is vested in third persons by the act of law, which cannot be divested, unless by their own default. Bradby. 115. But if goods remain on the demised premises after a fictitious bill of sale made of them under an execution, they are liable to be distrained as before. *Smith* v. *Russell*, 3 Taunt. 400. And under 8 Anne, c. 14, the landlord is entitled to rent to the extent of one year, although there be an execution, excepting as against the crown. [See *Peacock* v. *Purvis*, 2 Brod. and B. 362, and 5 J. B. Moore, 79.]

A settled distinction seems now to be, that where a stranger's cattle escape into another's land, by breaking the fences where there is no defect in them, or if the tenant of the land where the distress is taken is not bound to repair the fences, though there is a defect in them, the cattle may be distrained for rent, immediately before they are *levant* and *couchant*. Yet if the landlord chase the cattle upon the land liable to his distress, then levancy and couchancy is material, *Kemp* v. *Crews*, 1 Ld. Raym. 170. But if the cattle escape through the defect of fences which the tenant of the land is bound to repair, they cannot be distrained by the landlord for rent reserved upon a lease for years, though they have been *levant* and *couchant*, unless the owner of the cattle, after notice that they are in the land, neglect or refuse to drive them away. For if the lessor had retained the land in his own hands, he ought to have repaired the fences; and when he puts in a lessee, he ought, by covenant, &c. to oblige him to repair; and therefore in that case, if the law should allow the lessor to distrain the cattle of a stranger which come in by escape, before they are *levant* and *couchant*, it would be in effect to allow a man to take advantage of his own wrong; therefore the opinion, Co. Litt. 47. b. that "beasts that escape may be distrained for rent, though they have not been *levant* and *couchant*," cannot be maintained so generally, no books warranting it, excepting 7 Hen. VII. 1 and 2: and 10 Hen. VII. 21 b. *Kemp* v. *Crews*, 1 Ld. Raym. 168. *Kimp* v. *Cruwes*, 2 Lutw. 1578. But it seems, the lord of the fee for an ancient rent may distrain cattle which come in by escape, although they have not been *levant* and *couchant*. 1 Ld. Raym. 167. Argu. 9 Vin. Abr. 144. n.; 1 Roll. Abr. 668. pl. 2 and 3. However, it seems to be admitted, that the lord may distrain them after they have been *levant* and *couchant*, without giving notice to the owner of the cattle; Doctor and Student, Dial. I. ch. 7, p. 24. 18th ed. Wms. n. 2 Saund. 290. (7). Hargr. n. Co Litt. 47. b. (3). Bradby, 115; although it be in default of the fences. which the tenant of the land ought to maintain, because the lord of the seigniory has nothing to do with the repairing of the fences; but the owner may prevent the distress, by pursuing and retaking the cattle before the distress be made. 1 Ld. Raym. 168, Argu. Gilb. Distresses, 46. 3d ed. It is said, that the grantee of a rent-charge may distrain the cattle of a stranger, after they have been *levant* and *couchant*; 2 Leon. 7, 8; *i. e.* the stranger's cattle must be so long resident on the lands out of which the rent-charge issues, that notice may be presumed to the owner of them; that is, they must be *lying down* and *rising up* on the premises, *for a night and a day*, without pursuit being made by the owner of them: Gilb. Distresses, 47, Hunt's ed.: and it is said, although no

Distinction as to distraining a stranger's cattle which escape:
1st, By a land lord for rent;

2d, By the lord of an ancient seigniory, for services;

3d, By a grantee of a rent charge.

Definition of levancy and couchancy.

notice be given to the owner; because the grantee having nothing to do with the fences, there is no default in him as there is in a landlord, and that therefore such notice is not necessary. *Kimp* v. *Cruwes*, 2 Lutw. 1580. Wms. n. 2 Saund. 290, (7). Hargr. n. Co. Litt. 47. b. (3). But it is rather singular, that the grantee of a rent-charge should be in a better situation as to taking a distress than the person who granted him the power of distress.

Equity will sometimes grant relief in favour of a stranger, when his cattle are distrained.

In a case where a rent-charge had been in arrear for twenty years, and cattle, escaping out of the adjoining grounds, had been distrained for the arrears, the distress was relieved against in equity. *Broden* v. *Pierce*, 2 Vern. 131. It has been held, that cattle going to London, and put into a close, with the consent of the landlord and leave of the tenant, to graze for a night, might be distrained by the landlord for rent. *Fowkes* v. *Joyce*, 3 Lev. 260. 2 Vent. 50. 2 Lutw. 1161, English ed. 472: but the owner of the cattle was afterwards relieved in equity, on the ground of fraud in the landlord, who had consented to the cattle being put into the close, and afterwards distrained them for rent; and he was decreed to pay all the costs, both of law and equity. And it should seem, that at this day a court of law would be of opinion, that cattle belonging to a drover being put into a ground, with the consent of the occupier, to graze only one night, in their way to a fair or market, were not liable to the distress of the *landlord* for rent. Wms. n 2 Saund. 290. (7).

A grant of a rent-charge by one joint-tenant is good as to him, and his goods and the goods of those claiming under him may be distrained.

Persons having a joint interest in lands with others, are not liable to a distress for a rent-charge granted by the others: thus, if two joint tenants be seised of an estate in fee-simple, and one of them grant a rent-charge by deed to another person, out of that which belongs to him; in this case, during the life of the grantor, the rent-charge is effectual; but after his decease the grant of the rent-charge is void, as a charge on the land; for he who has the land by survivorship, shall hold the whole land discharged; because he who survives, claims and has the land by survivorship under the feoffor, &c. which is by a title paramount the grant of the rent-charge, and has not, nor can claim, any thing by descent from his companion. Litt. s. 286. 3 Bac. Abr. 697. *Joint-tenants*, &c. (1) 5. However, if he who made the charge be the survivor, it is good for ever. Co. Litt. 184. b. It is on the principle of the above case, that if there be two joint tenants in fee, or for lives, and one of them make a lease for years, reserving a rent, and die, the surviving joint-tenant shall have the reversion by survivorship; but he shall not have the rent, because he claims to be in the estate from the first feoffor, which is paramount the rent. Dyer, 187. a. (5). Finch's Law, 13. Pickering's ed. Co Litt,

185. a. 318. a. 1 Co. 96. a. 3 Bac. Abr. Gwill. ed. 696. *Joint-tenants, &c.* (I). 3. 3. Noy's Max. 4. 19, 9th ed. But if there are several joint-tenants, and one grant a rent-charge out of the land, the grantee may distrain the cattle of the grantor, but he cannot distrain the cattle of the other joint-tenants; although he may distrain the cattle of a stranger that come upon the land. 1 Roll. Abr. 669. pl. 25, 26, 27. 9 Vin. Abr. 145. Rolle says, if there be several joint-tenants, and one grant a rent-charge, and afterwards leases his part to the other joint-tenants *at will*, and they occupy the whole, yet their cattle cannot be distrained for the rent; because the lease at will is void, inasmuch as a joint-tenant ought to occupy *per my et per tout* by the law. 1 Roll. Abr. 669. pl. 29. Brooke's Abr. pl. 68. ed. 1573, cites the same case, 11 Hen. VI. 28, where it is in a manner agreed, that where five joint-tenants are, and two charge the land with rent, and lease their part to one of the other three, and the grantee distrain him, that this is good; for by taking the lease of the part of the grantors, he shall be in the same plight as the grantors themselves should be; but it would be contrary, if he had occupied his first part only, *i. e.* not accepted the lease. Rolle adds, but admitting the lease at will to them to be good, then their cattle may be distrained for the rent; because they come to the third part, under the charge, and they shall be in the same plight that the grantor himself was. 1 Roll. Abr. 669. pl. 30. 9 Vin. Abr. 146. But if there be two joint-tenants in fee, and one of them grant a rent-charge out of his part, and afterwards release to his joint companion, and die, he shall hold the land charged, for he is out of the reason and principle stated by Littleton; because he claims not by survivorship, inasmuch as the release prevented the same. So if A, B, and C, be joint-tenants in fee, and A charge his part, and then release to B and his heirs, and die, the charge is good for ever; because, in that case, B cannot be in from the first feoffer, because he has a joint companion at the time of the release made, and several writs of *præcipe* must be brought against them. Co. Litt. 185. a. Litt. s. 304. Bro. Abr. *Alienations.* pl. 31. Although the release of one joint-tenant to the residue of the joint-tenants makes no degree in supposition of law, neither is there any several estate between them; but the estate of him that releases is, as it were, extinguished and drowned in their estate and possession, so as one *præcipe* lies against them, yet shall they hold the land charged as aforesaid. Co. Litt. 185. a. To avoid the above questions, whenever a joint-tenant charges his estate with a rent-charge, he should sever the joint-tenancy.

If the joint-tenant who granted the rent-charge convey his estate to the other joint-tenants, their goods may be distrained.

To avoid questions, the joint-tenancy should be severed.

But if there be two coparceners of tenements in fee-simple by the

Where a coparcener claims

the share of a deceased coparcener, as heir, she is liable to a distress for a rent-charge, granted by the deceased.

common law, Litt. s. 286, or of copyholds, according to the custom, Co. Litt. 185. a. and before any partition made one of them charge by deed that which to her belongs, with a rent-charge, &c. and afterwards die without issue, by which that which belongs to her descends to the other coparcener, in this case the other parcener shall hold the land charged, &c. because she came to this moiety by descent as heir. Litt. s. 286.

On a unity of seisin in a rent, and in the land out of which it issues, coparcener cannot distrain until partition.

Where there is in one of the coparceners a unity of seisin or possession in the rent, and the land on which it is charged, there, for the benefit of the coparcener entitled to the rent, the law apportions the rent, by extinguishing only so much of it as is proportionate to her share in the land: but still the right of distress is in some degree restrained. So that if a woman be seised of a rent-charge, and afterwards the lands charged descend to her and her two sisters in coparcenary, only a third part of the rent is extinct by such unity of estate: but yet the coparcener who has the rent cannot distrain on the land for the other two parts of the rent, until partition be made; because, until that time, she is seised with her two sisters, *per my et per tout* in the land. Bro. Abr. *Distresse*. pl. 37. 64. Co. Litt. 163. b. 169. a. 175. b. Bradby, 57. So if a man seised of four acres of land have issue, a son and a daughter by one marriage, and two daughters by another marriage, and grant a rent-charge out of his land to his son in fee, and the son die without issue in the life of his father, and on the death of the father, the land descend to the three daughters, the eldest daughter cannot distrain for the two parts of the rent, until partition be made. Bro. Abr. *Extinguishment and Suspension*. pl. 31.

Tenant of the land claiming by a title paramount, is not liable to a distress.

But where the tenant of the land holds by a title paramount the distress, he is not liable to it: so that if a man be seised of a rent-charge by *prescription*, issuing out of a manor, it seems he cannot distrain the cattle of the copyholders of the manor, if they have not been accustomed to be distrained: because they are in by prescription also, and therefore their title is as high as that of the owner of the rent. *Cannor* v. *Turner*, 1 Roll. Abr. 669. pl. 32. 9 Vin. Abr. 146. But a *dubitatur* is added. However, it is said in the same case, it is clear if the owner of the rent has it by *grant*, or otherwise, and not by prescription, the cattle of the copyholders cannot be distrained for it. 1 Roll. 669. pl. 33. So if a man seised in fee make a lease for life, and afterwards grant a rent-charge, if the grantor's cattle come upon the ground, the grantee may distrain them, although he cannot distrain the tenant in possession, because he holds by a title older than the grantee. Brownl. 32. 9 Vin. Abr. 148. pl. 49. So if a man lease at will, and afterwards grant a

rent-charge (admitting this does not determine the will, which it seems it does not, as such demises are now generally considered as tenancies from year to year, and require 183* days notice to quit, ending with the year, Noy's Max. 118, 9th ed.), the grantee cannot distrain the cattle of the tenant at will, because he was in before the charge, and therefore the tenant of the freehold cannot charge him with a distress before the will be determined. 1 Roll. Abr. 669. pl. 31. But these two last mentioned cases seem to have been derived from the principle of there being no privity between the tenant and grantee without attornment: and it seems, that since the statute 4 Anne, c. 16, the tenant would be liable to be distrained for nonpayment of so much of the rent of the lands as is unpaid when he receives notice of the grant of the rent-charge, and for so much rent as becomes due afterwards. *Vide ante*, 602.

Wife surviving, not subject to a distress for rent-charge granted by her husband out of her term for years.

As his alienation of the term would bind the wife surviving, he should assign the term upon trusts for securing the annuity.

And if a man be possessed of lands for a term of years in the right of his wife, and grant a rent-charge, and die, the wife shall avoid the charge, because she does not claim under her husband; but if the husband survive the wife, the charge is good during the term. Co. Litt. 184. b. But the husband's alienation of the term itself, or of any part of it, binds the wife surviving. Hargr. n. Co. Litt. 184. b. (6). Co. Litt. 351. a. See the reason of this difference, Co. Litt. 185. a.; and see further, 1 Bac. Abr. 476, Gwill. ed. *Baron* and *Feme* (C) 2. Butl. n. Co. Litt. 351. a. (1). 1 Rop. Husband and Wife, 173. Therefore when a husband charges an annuity on his wife's term for years, he should also absolutely assign the term, upon trusts for securing the annuity.

As the privity of estate must continue, after assignment or regrant, grantee cannot distrain;

However, in all cases, the privity of estate must remain; and therefore, if one seised in fee of a rent, grant it to another in fee, or regrant the rent back to the grantor, either in fee, in tail, or for life, he cannot afterwards distrain for the arrears; because he has by his own act, destroyed all the former privity of estate between himself and the tenant; and in respect to it, he has no more right than any stranger to come upon the land, after such transferring over, or re-granting the rents. *Et sic de similibus.* *Ognel*'s case, 4 Co. 49. *Dixon* v. *Harrison*, Vaugh. 40. 43. And it was agreed, *per totam curiam*, if A have a rent-service, or rent-charge in fee, or for life, and the rent be in arrear, and afterwards A grant over the rent to another, and the tenant attorn, which before the statutes 4 Anne, c. 16. s. 9. and 11 Geo. II. c. 19. s. 11. was in these cases necessary; and afterwards A die, his executors are not within the 32 Hen. VIII. c. 37.; for by the grant over, the arrears were lost,

nor his executors;

* [But the notice need not always be 183 days, *Doe* v. *Green*. 5 Esp. n. P. C. 199. as it may be from Michaelmas to Lady Day, 197 days. Ed.]

and were not due to the testator at the time of his death, as the statute speaks; the words being, "in as large and ample manner as the said testator might, and ought to have;" and after the grant, the testator himself, nor any other, could *distrain*, or have any remedy for the arrears: also, in the clause next preceding, touching the *action of debt*, the words are, "unto whom any such rent or fee-farm is, or shall be due, and not paid at the time of his death:" so that the act gives no remedy, when the testator himself, by his own act, has dispensed with the arrears; but only when they were due to him at the time of his death, and by the act of God become remediless. *Ognel*'s case, 4 Co. 50. b. Vaugh. 40, 41. Nor can the arrears of a rent-charge, due at the time of the assignment, be assigned, because they are a mere *chose in action*. Bradby on Distresses, 52. Vaugh. 40. Such an assignment of the arrears is not, however, wholly void; for, where in a replevin, the defendant avowed for *a rent-charge and arrears thereof*, assigned by a bargain and sale; and issue being taken on the assignment, the jury found, that they were so assigned: and thereupon verdict for the defendant. On its being moved in arrest of judgment, that the jury had found a void assignment, and therefore a repleader should be awarded, the Court seemed to think, that the objection could not prevail after verdict. *Guilliams* v. *Munington*, Sir Tho. Raym. 200. But the assignee may distrain for a rent-charge which becomes due after the assignment. *Maund*'s case, Co. Litt. 144. a. 7 Co. 56. French. ed. 1671. 28. b. second paging, Serjt. Wilson's ed. (*a*) But if a grantee of a rent-charge in fee levy a fine of it, to the use of himself and wife in tail, he has so far the same estate in the rent, as to be capable of distraining for the arrears due before the fine levied. *Witherhead* v. *Harrison*, Sir Tho. Jo. 3.: and see further, Vaugh. 43, &c.

nor an assignee of arrears:

but assignee may distrain for what becomes due after assignment.

Grantee may distrain for arrears, if the use of a fine of the rent be not declared to a stranger.

If the distress be limited to a stranger for the benefit of the grantee of the rent, yet the grantee himself may distrain for it; for the stranger is his servant in this, and what he may do by his servant, he may do himself: 2 Roll. Abr. 425 (G). pl. 3. 18 Vin. Abr. 479: and Mr. Powell, copying Gilb. on Rents, 42, says, in relation to this case, what a man may do by one servant he may do by any other: 1 Pow. on Contracts, 372: but it seems only to extend to the special case of the king, on account of his prerogative; Co. Litt. 147. a. 7 Co. 23. a. Com. Dig. *Rent*. (C. 8.); which in these cases is more exten-

The grantee may distrain, though the distress be limited to a stranger for his benefit.

(*a*) The *seventh* part of Serjt. Wilson's English edition of Lord Coke's Reports, as well as some of the other editions, commences a new paging after page 28, and causes much trouble: this error has been often exclusively charged on the Irish editions; and it has been the foundation of a general prejudice against Irish editions of other law books.

sive than the powers of a subject; Noy's Max. 42. 134. 9th ed. *Mountjoy's* case, 5 Rep. 4; however, these prerogative powers are not extended to the grantee of the king: Bro. Abr. *Distresse*, pl. 48: excepting in the case of vendees of fee-farm rents of the crown, under 22 Car. II. c. 6, who may distrain upon all the lands of the original grantor. Bradby, 93.

An annuitant, with a power of distress, may distrain for arrears, though a term be vested in himself, to secure the payment.

In replevin, the defendant made cognizance as bailiff of Nathaniel Pigott, Esquire, upon a distress for 750*l.* arrears of an annuity or yearly rent; stating, that on the 5th and 6th of January, 1776, the plaintiff for valuable consideration did, by lease and release, convey to Sir Michael le Fleming and James Rodney, and their heirs, among other things, the lands in which the distress was taken, to the use of the said Pigott for *ninety-nine years*, if he so long lived, on the trusts therein aftermentioned, and subject thereto, to the use of the said Ann Fairfax, the plaintiff, for her life, with divers remainders over. The trust of the term is declared to be, that the said Pigott might yearly, *during his life*, receive and take thereout an annuity or rent of 250*l.* by equal half yearly payments, at Michaelmas and Lady-day, *with power to enter and distrain for arrears*;—and then justifies for a distress for 750*l.* for three years arrears due Lady-day, 1779. To this cognizance the plaintiff demurs, and the defendant joins in demurrer.

Adair, for the plaintiff, objected; that the ninety-nine years term being vested in Pigott, he could not distrain upon lands in his own legal possession; though he might bring an ejectment.

4 Geo. 2. c. 28 s. 4. Serjt. Hill's MS. notes to W. Bla. Rep.

But by Blackstone, Justice, (*absente* De Grey, Chief Justice, and Gould, Justice)—I look upon Mrs. Fairfax, during the ninety-nine years term to be, by her own act and consent, a mere *under tenant* to Pigott, at the rate of 250*l.* per annum, for which he has paid a valuable consideration. *To this rent a distress is incident by law, exclusive of the clause in the deed.* So that there is no colour for the objection. Nares, Justice, of the same opinion, for this and many other reasons. Judgment for the cognizor. *Fairfax* v. *Gray*, 2 Wm. Bla. Rep. 1326.

The late Mr. Serjeant Hill, referring to the above case, says, though the opinion is given there exclusive of the clause in the deed, yet as there was a clause for distress in the deed, the opinion was extrajudicial: Serjeant Hill's MS. notes to 2 Vin. Abr. 516. 9 Vin. Abr. 125. 15 Vin. Abr. 362, in Lincoln's Inn library: and from the learned serjeant's manuscript notes to Sir Wm. Blackstone's Reports, he appears to have thought that the learned judge referred to the 4 Geo. II. c. 28; but he evidently meant that Mrs. Fairfax's occupation was a mere tenancy under Mr. Pigott.

Rents-seck as well as rents-service and rents-charge, may be recovered by distress.

The remedy by distress is by the common law, incident to a rent-service; but to have constituted a rent-charge, a power of distress must have been expressly given by the deed; 6 Bac. Abr. 34. *Rent.* (K); by the common law, no distress was incident to a rent-seck; but now, by the statute 4 Geo. II. c. 28. s. 5, after reciting, "*Whereas*, the remedy for recovering rent-seck, rents of assize, and chief rents, are tedious and difficult," it is enacted, "That from and after the twenty-fourth day of *June*, one thousand seven hundred and thirty-one, all and every person or persons, bodies politic and corporate, shall and may have the like remedy by distress, and by impounding and selling the same, in cases of rents-seck, rents of assize, and chief rents, which have been duly answered or paid for the space of three years, within the space of twenty-one years before the first day of this present session of parliament [the twenty-first day of January, one thousand seven hundred and thirty-one], or shall be hereafter created, as in case of rent reserved upon lease, any law or usage to the contrary notwithstanding."

A rent granted since the statute *quia emptores*, and before this statute, must be brought within it in an avowry.

For a rent, without an express clause of distress, granted in fee since the statute of *quia emptores*, and before the passing of this statute, there cannot be a distress but under this statute; and therefore in an avowry for such a distress, the case must be brought within it. *Bradbury* v. *Wright*, Doug. 627.

Mr. Justice Blackstone says, "the statute 4 Geo. II. c. 28, extended the same remedy to all rents alike, and thereby in effect abolished all material distinction between them. So that now we may lay it down as an universal principle, that a distress may be taken for any kind of rent in arrear; the detaining whereof beyond the day of payment, is an injury to him that is entitled to receive it." 3 Bla. Com. 6, 7. This must, however, be understood with some limitation; for at the common law, it was not every reservation, though *nominally of rent*, which constituted a *rent*, properly so called: for, as it appears, *ante*, 581, if an annual sum of money were reserved upon the grant of an incorporeal hereditament, the sum so reserved was not a *rent*, but only a personal *annuity*. And therefore nothing is distrainable within the statute of Geo. II. which is not such a reservation as would have been at least a *rent-seck* at the common law: and it appears to have been a rule of the common law, that a *rent* could not issue out of a mere chattel. See *Butt's* case, 7 Co. 23, 24. b. *post*, 620. Bradby, 100.

It seems that nothing is distrainable within 4 Geo. 2. c. 28. s. 4. but what would have been at least a rent-seck at common law.

A rent cannot issue out of a term for years, so as to authorize a distress; unless there be

Thus, in replevin, the defendant avowed under a distress for rent due from the plaintiff to him, upon an assignment of a lease of a term for years to the plaintiff, in which assignment there was *no clause of*

distress; the single question was, whether this was such a rent for which a distress laid, there being no reversion in the defendant. It was said for the defendant, that although rent be incident to the reversion, yet it is not an inseparable incident, and that therefore it may be severed from the reversion; and that although there is no clause of distress in the assignment of the term, yet the rent reserved thereupon may be considered as rent-seck, and distrained for by the statute 4 Geo. II. c. 28. s. 5; and that it appeared clearly to be the intent of the parties, that the plaintiff should pay rent to the defendant. This case was so clear, that the Court gave judgment for the plaintiff without hearing his counsel.—*Curia.* "There are two ways of creating a rent: the owner of the lands either grants a rent out of it, or grants the lands and reserves a rent; there is no such thing as a rent-seck, rent-service, or rent-charge, issuing out of a term for years. Bro. *Dette*, pl. 39. cites 43 Ed. III. 4. [8]. Per Finchden [Finch], Ch. Justice, C. B. If a man hath a term for years, and grants all his estate of the term, rendering certain rent, he cannot distrain if the rent be in arrear. This case is law, and in point; therefore if the avowant will recover what is owing to him from the plaintiff, he must bring his action upon the contract." Judgment for the plaintiff, *per totam curiam.* ——— v. *Cooper*, 2 Wils. 375. [*Parmenter* v. *Webber*, 2 J. B. Moore, 656.]

a reversion in the distrainor, or an express clause of distress.

A similar principle was adopted in a more recent case than that last cited, where a lessee for years assigned over his term, and afterwards the lease came back into the hands of the original lessor by an agreement between him and the assignee, that the lessor should have possession of the premises, paying the assignee a certain sum annually above the rent, towards the good-will already paid by the assignee: it was held, that such agreement operated as a surrender of the whole term; and therefore, that the sum so reserved, was a mere *annual sum in gross*, and not a rent for which the assignee could distrain; but that he had a remedy by assumpsit for the sum reserved for the good-will. *Smith* v. *Mapleback*, 1 Term. Rep. 443.

The point determined by the above-cited cases is, that an annual sum of money reserved upon a *chattel*, in which the lessor has no reversion, is not a *rent*, but a mere *annuity*, and therefore is not distrainable as a *rent-seck*, under the statute of Geo. II. But these cases (allowing to them the fullest authority) do not at all apply to any reservation or grant of rent during an estate of *freehold*, which was unquestionably a *rent* at the common law, and as such is distrainable as a *rent-seck* within the statute, without a reversion or a clause of distress. Nor do they apply to a reservation, or grant of a rent out of a

term for years, when there is a clause of distress expressly given by the deed.

A rent cannot issue out of a chattel, but a term may be subjected to a distress by an express power.

Thus in *Butt's* case, 7 Co. 23. Serjt. Wilson's ed. 51 French ed. In replevin, between *Fish* and *Butt*, the case in effect was, one seised of Black-acre in fee, and also possessed of White-acre for years, by his deed granted a rent out of both to A, to have and perceive to him for the term of his life, *with clause of distress in both;* and for rent behind, A distrained, and avowed in White-acre; and if the distress were well taken or not, was the question. And it was agreed by the whole court, that the distress was well taken. And in this case these points were resolved :—1, That if lessee for years of a carve of land grant to another a rent out of the said carve, for the life of the grantee, that is a good charge during the term, if the grantee so long live; for the grant shall be taken more strong against the grantor, and shall not be void, when by any construction it may be made good [*vide* Plowd. Comment, in *Welchden's* case]; and in such case, the grantee has but a chattel. So if the lessee for years grant the carve of land to another for the term of his life, he has the whole term if he live so long, as well as in the case of a devise. 2. It was resolved, that when a rent is granted out of land in fee, and out of a term for years, to have and perceive to the grantee for the term of his life, that this, as an estate of freehold, according to the purport of the deed, cannot issue out of the term for years, but out of the land which the grantor hath in fee-simple only; because the freehold of the rent can issue out of that, and not out of the chattel. And one entire rent cannot be a freehold out of Black-acre, and a chattel out of White-acre. And to make two rents, when one only is granted by one to another, would be, in this case, injurious; and the bargain and mutual agreement of the parties cannot charge such thing with rent which is not chargeable by the law, as out of an hundred or advowson, 30 *lib. Assisarum*, pl. 5; out of a fair, 14 E. 3. *Scire facias*, 122. the Earl of *Kent's* case, neither can a rent be granted or reserved of any estate of freehold out of any other hereditament which is not manurable, either in possession, reversion, or by possibility, but is *hereditamentum incorporeum;* for *pacta privata non derogant juri communi:* and in an assize they cannot be put in view, nor can any distress be taken in them. But in the case at bar, White-acre is *hereditamentum corporeum*, and manurable; but for the smallness and incapacity of the interest that the grantor has in it, this rent of freehold cannot issue thereout, but shall issue only out of the land in fee-simple. And in the case at bar, in an assize brought of this rent, the land in fee shall only be put in view, and if the grantee ac-

cept a lease or grant of White-acre, it will not suspend his rent. 3. It was resolved, that White-acre should, during the term, be subject to the distress of the grantee for the rent during the years, although the rent does not issue thereout, as in 41 (46) Ed. 3. 14, when land is charged with a rent in fee, goods and chattels may be bound to the distress. And it was said, forasmuch as White-acre is only charged with distress, and the rent does not issue thereout, if the grantee take a lease of any part thereof, it is no suspension of the distress, but that he may distrain in the residue; for it is not issuing out of the land, but to be taken on the land: as, If I have a warren in another's land, and take a lease of parcel of the land, although the land be charged with warren, yet forasmuch as it doth not issue out of the land, it is not any suspension. But as the avowant pleaded the grant out of the term for years only; and concluded *virtute cujus*, he was seised *in dominico suo ut de libero tenemento pro termino vitæ suæ*, which is repugnant to have a freehold out of a term for years; judgment was given against the avowant, for insufficient pleading. [See *Dance* v. *Hastings*, 4 Bing. 2.]

Grant of rent in one parcel of land and distress in another.

In the grant of a rent-charge, it appears *ante*, 583, that the rent may issue out of one parcel of land, and the distress be reserved in another: and in this case, whether the lands lie within the same or different counties, it seems, that the distress can be taken only on the land in which it is reserved. Litt. s. 221. But both parcels of land are charged, one with the rent, and the other with a distress for the rent; one issuing out of the land, and the other to be taken upon the land. Co. Litt. 147. a. In *Butt's* case, 7 Co. 24. a. 52 French ed. it is said, that as the parties have expressly limited out of what land the rent shall issue, and in what land the distress shall be taken, the law will not make an exposition against the express words and intent of the parties; when it may stand with the rule of law *quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est.* Co. Litt. 147. a. Wingate's Maxims, 24. 2 Saund. 167. 14 Vin. Abr. 58. pl. 6. 2 Roll. Abr. 425. (E) pl. 2. 18 Vin. Abr. 478, pl. 2. *Sed quære*—Whether the 4 Geo. II. c. 28. s. 5. has not altered the law in this respect, and enabled the grantee in such a case to distrain in both parcels of land, unless the parcel, out of which the rent is issuing, be expressly exempted from the distress?

Devise of a rent.

When a testator had a power to distrain for a rent at common law and devised the rent, the devisee could distrain without attornment: but if the devisor had not that power, he could not confer it on his devisee, according to the rule in *Finch's* case, 5 Co. 113. Co. Litt.

Power of distress not necessary on creating a freehold rent by devise.

309. b; *Nemo potest plus juris ad alium transferre quam in ipso est: Nil dat quod in se non habet. Long* v. *Buckeridge*, 1. Str. 109, 111. Where a rent for an estate of freehold was devised out of a freehold, without any estate in the land, it seems formerly to have been necessary for the devisor to give a power of distress; that is, in effect, to make it a rent-charge, in order to entitle the devisee to distrain. *Gouge* v. *Hayward*, Bridgm. 53. And although this is not now necessary, as a *freehold* rent devised out of a *freehold*, must be considered as a rent-seck, to which the statute 4 Geo. II. c. 28. s. 5. has extended the right of distress; Bradby, 89; yet it is usual to give such an express power by the will since the statute.

Difference between a devise and a bequest of a rent.

Devise vests absolutely by the will; but the executor must assent, either expressly or impliedly, to a bequest.

There is however one considerable difference between the devise of a freehold estate, or a freehold rent, and the bequest of a chattel interest: for a devise vests absolutely by the testator's will, but the interest of the legatee must await the executor's assent to the bequest; and therefore, before such assent, the interest remains in the executor, and consequently the legatee cannot distrain, although an express power of distress be given by the will. Toller's Law of Executors, 306, 307. This assent may be either express or implied; but it must relate to the particular subject of the legacy. Thus, if a lessee for years bequeath a rent to A, issuing out of the land, and bequeath the land to B, the executor's assent that A should have the rent, is no assent that B should have the land, because the rent and the land are distinct legacies. *Gouge* v. *Hayward*, Bridgm. 55. But under special circumstances, an executor's assent to one legacy may enure to another; as if the case last mentioned be reversed; the executor's assent that B should have the land, seems to imply his assent that A should have the rent; for the necessity of the executor's assent is established with a view to creditors; now to them the land is equally unproductive, whether it passes to B charged with the rent or not; for if the testator's estate were indebted, after this assent to the bequest of the term, the term cannot be put in execution for this debt, but the assent of the executor is in him a *devastavit*. *Gouge* v. *Hayward*, Bridgm. 55. And also, as it was the testator's intention that B should hold the land subject to the rent to A, the executor's assent to B's having the land shall, in conformity to the will, be construed an assent to the legacy to A. Off. Ex. 237. Toll. Ex. 310. *Welcden* v. *Elkington*, Plowd. 521, and point. 1 Roll. Abr. 620 (E), pl. 3. Godolphin's Orphans Legacy, 360. 4th ed. So if a man bequeath a term to his wife during her widowhood, and if she marry, then a rent to her out of the land, with a clause of distress, Bridgm. 53, and make the wife executrix, and die,

and the wife agree to the legacies, and afterwards marry, Rolle says it was adjudged, that the rent shall rise to her well enough, though she once had the whole term in her as executrix, for this future rent shall not be extinct thereby: *Goffe* v. *Hayward*, 1 Roll. Abr. 610. pl. 8: but it appears that there was no judgment given: Roll. Rep. 247. pl. 17, 368. pl. 23. *Gough* v. *Howard*, 3 Buls. 121: and in Bridgman's Rep. it is said, the Court was equally divided on this point. Bridg. 56. See Godolph. Orph. Leg. 244. [And see Vol. II, 640.]

Power of distress usually given on creating a fee-farm rent;

Although the statute 4 Geo. II. c. 28. sec. 5. has given a remedy by distress for recovering a fee-farm rent, as a rent-seck, when there is no power of distress, yet as a distress is not incident to this rent by the common law, it is usual, since the statute, to give an express power of distress, and thereby make it a rent-charge. And it has been recommended to create the rent by way of declaration of use, rather than of reservation: 3 Pres. Abs. 54; in order to bring it within the 27 Hen. VIII. c. 10. s. 4. *ante* 603, which renders an express power of distress unnecessary; although even in that case an express power of distress is usually given. And since the statute of Geo. II. in creating a rent for life or lives out of *freehold* lands, it is the almost invariable practice to give an express power of distress, although such a rent may be recovered by distress, as a rent-seck, under the statute. Watk. Conv. 89. 2d ed. Pres. ed. 157. And although it is stated in 6 Bac. Abr. 6. Gwill. ed. 4 Bac. Abr. 337, 4th ed. *Rent* (A) 3, that if a man seised in fee grant a rent for *years* without a clause of distress, it is a rent-seck, yet as, Litt. s. 215. 218. *Morris* v. *Prince*, Cro. Car. 520. Keilw. 104, pl. 11. *Walsal* v. *Heath*, Cro. Eliz. 656; the authorities cited do not support that proposition; and as the old law books never mention a rent-seck for years, but always assume it to be granted in fee, in tail, or for life: Litt. s. 217, 218. 2 Roll. Abr. 423 (B). 18 Vin. Abr. 473. Com. Dig. *Rent*, (C. 9.): and as an assize cannot be had for recovering a rent by a tenant for years, Com. Dig. *Assize* (B. 5.), but only lies for a rent-service, rent-charge, or rent-seck, when it is *de libero tenemento*, 8 Co. 46. a., viz. of an estate of freehold or inheritance; Com. Dig. *Rent* (D. 1.); *Assize* (B. 2.); and as the old books state, that if the grantee were never *seised* of the rent, he is without remedy: Litt. s. 217. 341. 2 Roll. Abr. 424 (C.). 18 Vin. Abr. 474 (C). Vaugh. 48: and as a seisin cannot be had of a chattel interest, but only a possession,—an express power of distress is invariably given on creating a rent for years, to be issuing out of a freehold estate. In creating a rent for life, or years, or for years determinable on a life or lives, to be issuing out of a chattel interest, it appears, *ante*, 618, 619, that a power of distress is absolutely necessary to enable the grantee to distrain, unless he has the reversion of the lands.

or a rent for life or lives out of freehold lands;

or a rent for years out of a freehold since the 4 Geo. II. c. 28.

Power of distress necessary on creating a rent out of a chattel interest

A rent not well reserved or granted at law, binds the land in equity.

Although a rent be not well reserved or granted at law it may be god in equity: thus the land will be incumbered in equity with the annual sum intended as a rent; and such incumbrance will be binding on the land, into whose hands soever the land shall come. Such annual sum should be treated as a charge, by way of lien. 3 Pres. Abs. 55.*

The usual manner of giving a power of distress.

The power of distress is usually given to the grantee, his heirs and assigns, or to him, his executors, administrators, and assigns, according to the nature of the grant, in case the annuity or rent-charge be behind for a certain number of days; and the distress in pound to detain, until the annuity or rent-charge, and all arrears thereof, and all costs, charges, and expences whatsoever sustained or occasioned by or attending the making, taking, and keeping, such distress, shall be fully paid and satisfied; *and in default of payment thereof* in due time after such distress shall be made and taken, *to appraise, sell, or otherwise act* therein, according to the due course of law, *in the same manner in all respects as landlords are by act of parliament authorised to do in respect to distresses for arrears of rent upon leases for years.* This power is not to be understood to authorize the grantor and his representatives to *make* a distress in the same manner as landlords and their representatives are enabled to do for arrears of rent upon leases for *years*, but only to *act therein* as to selling, [as to the time allowed a landlord to sell the goods distrained, see *Pitt* v. *Shew*, 4 B. & A. 208.] &c. *after the distress is taken;* for although rents, in which a testator or intestate had an estate of freehold, or of freehold and inheritance, are within the statute 32 Hen. VIII. c. 37; *ante*, 605; yet for *arrears incurred in his lifetime*, on a lease for *years*, no distress can be made by his executors or administrators, otherwise than at common law. Now at the common law there does not seem to be any case in which executors or administrators can distrain for the arrears due in the life of their deceased testator or intestate, unless the term, with the reversion thereon, vest in them in their representative characters. As if lessee for fifty years lease for twenty years, reserving rent, and die during the latter term; here the term will vest in his executors, with the reversion for the residue of the fifty years; and therefore, in respect of that reversion, they may distrain for the arrears at the common law; and as it should seem, may even distrain for them, as in their own right; because these arrears were never severed from the reversion, but the executors have the reversion, and the rent is annexed thereto, and in the same plight as the testator

Executors or administrators cannot distrain for arrears of rent on a lease for years, unless the reversion be also in them.

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* [It has been decided that a rent charge is within the 11 Geo. II. c. 19. s. 23, and the sheriff under a distress for it, may take and assign a replevin bond. *Short* v. *Hubbard*, 2 Bing. 349. 445.—*Ed.*]

himself had it, inasmuch as they represent the person of the testator; and it is not like the case of a freehold reversion which descends to the heir, and the arrears due in the ancestor's life time go to his executors. *Wade* v. *Marsh*, 1 Roll. Abr. 672. pl. 13. Latch, 211. 11 Vin. Abr. 423. pl. 17. Bradby. 32.

Executor should distrain for arrears of rent before he assents to a bequest of the term.

If the testator by his will specifically bequeath his reversionary interest in the term, it is necessary that his executor should distrain for the arrears, before his assent to the legacy; as the reversion will thereby be vested in the legatee; *vide ante*, 622; and being thus divested out of the executor by his own assent, it should seem that he can no longer distrain for the arrears incurred in his testator's lifetime, although he may have an action on the contract against the lessee. But where a term for years vests in executors or administrators, they may of course distrain for the rent accruing in their own time, as if they were intitled to it in their own right.

A distress may be made under a power, although not demanded on the day it becomes due.

A distinction is taken between a power to re-enter, or a *nomine pœnæ*, and a power to *distrain*; as where a rent is granted payable, &c. and in default of payment, *if it be demanded*, the grantee *may distrain*. In this case it is held not to be necessary to make a demand *on the day* the rent becomes due, as in the case of a re-entry, or a *nomine pœnæ*, where the contrary is not stipulated, but he may demand the rent at any time after, to enable him to distrain; Co. Litt. 202. a 144. a. *Maund's* case, 7 Co. 28. b. *Foster* v. *Wandlass*, 7 Term Rep. 119. Wms. n. 1 Saund. 287, b. Gilb. Rents. 73. 79. 83; even although the land should be in possession of a stranger. *Umphery* v. *Damyon*, 1 Buls. 181.

A power of distress not usually given on copyhold premises alone.

When an annuity is granted, to be issuing out of a copyhold estate, it is not usual to give a power of distress; because it has been conceived, that a copyholder cannot grant such a power. However, Lord Coke expressly says, that such a rent-charge extends as well to estates by the custom, as to estates at the common law. Co. Litt. 185. a. And it seems, that such a power of distress is good against every person claiming under the grantor, but not against the lord who claims by a title paramount. See Gilb. Ten. 297. When an annuity is granted out of copyholds and freeholds, the power of distress is generally extended to both the copyholds and freeholds. It seems to be doubtful, whether rents issuing out of a copyhold, are rents-seck within the 4 Geo. II. c. 28. s. 5: see Watk. n. Gilb. Ten. 468. 2 Watk. Cop. 181, 191., but it has been said, that they are within the statute. 1 Scriven on Copyholds, 101. 2d ed. Fisher on Copyholds, 138, 2d ed. See as to the practice in relation to copyholds, *ante*, 563 (c).

For further as to the remedy by distress, see Viner's and Bacon's

Abridgments, Comyn's Digest, Burn's Justice. and Gilbert on Distresses, and Gilbert on Rents; but particularly Mr. Bradby's Treatise on the Law of Distresses, which treats of the subject in a very scientific manner: however, on reading the 53d page of his Treatise, it should be remembered, that neither of the annuity acts requires the grant of a rent-charge in tail or in fee to be inrolled; but only grants "for one or more life or lives, or for any term of years or greater estate, determinable on one or more life or lives." *Vide Ante*, 357. 330.

Annuity acts do not extend to grants in tail or in fee.

Power of entry.

In addition to the power of distress, a power of entry on the lands is given to the grantee of an annuity or rent-charge and his representatives, on default in paying the annuity or rent-charge for a certain number of days.

1st, Taking effect under the statute of uses.

If the power of entry be limited by way of use, it takes effect from the statute of uses; as if A, by feoffment, lease and release, fine, or common recovery, convey an estate to C and his heirs, to the use, intent, and purpose, that B may receive out of the lands so conveyed a certain annual sum; and to this further use, intent, and purpose, that if such annual sum, or any part of it, be unpaid by a certain time, it shall be lawful for B and his assigns to enter upon and hold possession of the land, and receive the rents and profits of it, until the arrears are satisfied: here, as soon as the rent is in arrear, an use, which is served out of the original seisin of the feoffee, releasee, conusee, or recoveror, springs up and vests in the person to whom the power is given. This use is immediately transferred into possession by the statute: he has consequently a *right* to take and keep that possession, till the purpose for which it is executed is satisfied, and then the use determines. Gilb. on Rents, 137, 138. Butl. n. Co. Litt. 203. a (3). By virtue of this estate he may make a lease for years, to try his title in ejectment, either to obtain the possession of the lands, *if it be withheld from him*, or to restore it, if it be disturbed or divested; and if he assign the annual sum, this right of entry, and perception of the rents and profits of the lands charged with the payment of it, passes with it to the assignee; because it is a matter of inheritance and waits upon the rent, and not a mere possibility, or a contingent estate not coupled with any other estate, in which case it would not pass by a grant of the rent. *Havergill* v. *Hare*, Cro. Jac. 510. Sug. n. Gilb. Uses, 178. This case must be distinguished from the limitation of a *shifting use* to a man, his heirs and assigns, which will not pass to an assignee; as was decided in the case of the Earl of *Kent* v. *Steward*, Cro. Car. 358. 2 Roll. Abr. 49. pl. 4. 792. pl. 1. 795. pl. 9. 13 Vin. Abr. 226. 14 Vin. Abr. 76. 22 Vin. Abr.

Distinction between a *springing* and a *shifting* use.

222. 228: where, upon a conveyance to one in fee, a shifting use was created in another estate in favour of the same person, his heirs and assigns, in case he or they should be evicted out of the first estate. The first estate was aliened, and the assignee was evicted; and it was determined that the assignee could not enter on the other estate, but that the shifting use, on eviction, ought first to vest in the person to whom it was limited; for the words 'heirs and assigns,' are to be taken as words of limitation, and it shall not first vest in the assignee as purchaser; and it is not such an interest as is assignable over before eviction.

2d, As a power of entry at common law.

But a distinction must be made between a power of entry limited by way of use, and a grant of a rent to be issuing out of certain lands, with a proviso, declaration, or covenant, that if the rent be in arrear, the grantee may enter, &c. In the latter case, when the rent is in arrear, the grantee or his assignee, *Havergill* v. *Hare*, Cro. Jac. 511—512, may enter, by virtue of such proviso, and hold the lands until he be paid the rent by the perception of the profits: for although it has been objected that there is no estate conveyed, or no seisin in any person out of which an use can arise to the grantee upon nonpayment of the rent: and that this grant can pass no estate to the grantee as a conveyance at common law; because the grantee can have no inheritance or freehold in the land when the rent becomes in arrear, for want of *livery*, nor an estate for years, for want of a *certain commencement and determination*: yet it has been adjudged, that by the grant he has an *interest* vested in him when the rent becomes in arrear; as in the case of a feoffment rendering rent, with condition, on nonpayment to re-enter and retain till satisfied, which is a good grant by the intention of the parties; Litt. sec. 327; and yet there is no livery by the feoffee to reconvey the land, nor any express grant, but only a condition to re-enter and take the profits until he be satisfied; for a man may grant an inheritance of an *interest* in the land without livery, as *vesturam terræ*, 17 E. 2. 6. Hutt. 44. Fitz. *Precipe* 55; so he may grant the trees, which are an inheritance, or inherent in the land: and although the power of entry be an *uncertain interest*, which, for the uncertainty of its commencement and determination, might be void by the strict rules of law, if it were granted independent of any certain estate; yet it is good in this case, because it is created to attend a determinate estate, and nonpayment of the rent fixes the *certainty* of its *beginning*, and the satisfaction of the arrears, by the perception of the profits, the *end* and *determination* of such interest; and, therefore, the grantee may reduce such interest, as it arises, into his possession by ejectment, which is the proper method to recover the possession. Gilb. on Rents, 139. When

the rent is granted in fee, the power of entry is an inheritance, and descends with the rent to the heir; but when the entry is made, it is then no more than a chattel interest in the land, which shall go with the arrears to the executors. But if it were not for the words, "and to retain until he be satisfied out of the profits," it would be an inheritance in the land to remain in the heir as a penalty; but by reason of those words it is only a chattel, and shall go to the executors, who are the persons that are to be satisfied of these arrears. However, as after entry, under a common power of entry and perception, the grantee or his representatives cannot cut trees or commit waste, but only take the ordinary profits; it should be added at the end of the power, "such possession, when taken, to be without impeachment of waste." See *Havergill* v. *Hare*, Cro. Jac. 510. 2 Roll. Rep. 2. Poph. 126. 147. 3 Bulstr. 250. *Jemott* v. *Cowley*, 1 Saund. 112. a. 1 Lev. 170. 1 Sid. 223. 261. 344. Sir T. Raym. 135. 158. S. C. *Parkhurst* v. *Smith*, Willes, 340. Bridgm. ed. Bull. N. P. 104. (a). Runnington's ed. Gilb. Ejectment, 64, ed. 1725. *Binns* v. *Wright*, 1 Term Rep. 378, *ante*, 566.

Power of entry not extended to copyholds.

This power of entry cannot extend to copyholds; because, 1st, copyholds are not within the statute of uses; Gilb. Ten. 182. Co. Cop. s. 54. Tr. 124. Noy's Max. 319, 9th ed.; 2dly, the tenant has no power to convey a copyhold estate except by surrender, according to the custom; for if he had, the lord would have a tenant brought into the estate without his admittance or consent. Gilb. Ten. 181. 185. *Vide ante*, 563 (*c*).

A personal annuity, or an annuity or rent, charged on a term for years, may be effectually limited to executors and administrators *pur auter vie*.

It was intended to have been stated, *ante*, 596, that there appears to be no objection to the grant of a personal annuity to the grantee, his executors, administrators, and assigns, *pur auter vie*, because it is not a freehold, but only a chattel. *Savery* v. *Dyer*, Ambl. 139. 1 Dick. 162. S. C. *ante*, 594. However, when it is granted with words of inheritance, it is descendible to the heir, and the property itself is so far real, although it is personal only as to the security and the remedy. *Turner* v. *Turner*, 1 Bro. C. C. 325. 2 Wooddeson's Lectures, 72—75. 3 *Ibid*, 81. *Holdernesse* v. *Carmarthen*, 1 Bro. C. C. 382. *Stafford* v. *Buckley*, 2 Ves. sen. 170. So there appears to be no objection to the grant of an annuity or rent-charge to the grantee, his executors, administrators, and assigns, *pur auter vie*, out of a term for years; for as the grant is good for so many years as the term continues; *St. Auby's* case, Cro. Eliz. 183; it is in effect only a grant for years de-

terminable on lives; and it is only a chattel, because a freehold cannot issue out of a term of years. *Butt's* case, 7 Co. 25. a; *ante*, 621. And it has been held, if a man possessed of a lease for years grant a rent out of it generally, without limiting any estate, this shall be during all the term, and is not determinable by the death of the grantee. 1 Roll. Abr. 831. pl. 5. 10 Vin. Ab. 219, pl. 5. So where a man possessed of a term for years determinable on lives, devised twenty pounds per annum to J. S, to be paid half yearly out of this estate, if the *cestui que vies* should so long live: J. S. dying in the life time of the *cestui que vies*, and the question being, whether this rent should determine by his death, or go to the plaintiff, who was his executor, and be paid to him during the term? The Lord Chancellor decreed it for the plaintiff, the executor of J S; and said, if the rent would have continued as long as the term lasted, if J S had so long lived, why will it not last so long, though J S happened to die sooner: and he added, there is nothing said in the will to determine it. And the above case in Rolle's Abridgment, was looked upon to be an authority in point. *Gosley* v. *Gilford*, 2 Vern. 35.

[Where two persons covenanted to pay an annuity to A his executors and administrators, to pay him an annuity for twenty-one years, if they or the survivor should so long live; and if A should die within the term, to his child or children, if any, as A should appoint: or, in default of appointment, to all equally, and if no child, to A's wife: on the death of A, his child and wife, it was held that A's administrator was not entitled to the annuity during the remainder of the term. *Barford* v. *Stuckey*. 1 Bing. 225, and 5, J. B. Moore, 23. None of the questions, above discussed arose in this case, as it was a mere personal annuity. And see *James* v. *Tablint*, 5 B. and A. 889. *Peake* v. *Smith*, 3 Meriv. 313. *Ed.*]

GRANT AND COVENANT WITH TWO SURETIES; DEFEASANCE, &c.

GRANT *of a personal* ANNUITY *for the Life of the Grantor, in which* TWO SURETIES *join; with* COVENANT *for payment by the Three;* DEFEAZANCE *on Judgment; and Power to* REPURCHASE.

THIS INDENTURE, made the day of in the year of the reign, &c. and in the year of our Lord 182 ; BETWEEN [*grantor*], of, &c. [*surety*], of, &c. and [*other surety*], of, &c. of the one part, and [*grantee*], of, &c. of the other. WHEREAS the said [*grantor*] hath agreed with the said [*grantee*] for the sale to him of an annuity or yearly sum of pounds, to be paid to the said [*grantee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during the natural life of him the said [*grantor*], at or for the price or sum of pounds. AND WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of pounds, it was agreed by and between the said [*grantee*] and [*grantor*], that for securing the payment thereof the same should be secured by these presents, and also by the bond and warrant of attorney to confess judgment of the said [*grantor*] and [*surety*], and [*other surety*], who had agreed to join therein as sureties for the said [*grantor*], in securing the payment of the same annuity or yearly sum. [AND (*a*) WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of pounds, it was likewise agreed, that all costs, charges, and expences attending the said contract, and for prepar-

Parties.

Recital of contract for sale of annuity,

(*a*) *Vide ante*, 460, (*b*).

GRANT AND COVENANT, WITH TWO SURETIES; DEFEAZANCE, &c.

ing and perfecting the several securities for the same, and for preparing and inrolling a memorial thereof, should be borne and paid by the said [*grantor*].] AND WHEREAS in pursuance of the said agreement, the said [*grantor*], [*surety*], and [*other surety*], by their bond or obligation in writing, bearing even date with these presents, and each and any two (*a*) of them, have and hath become jointly and severally bound unto the said [*grantee*], in the sum of [*double the purchase money*] pounds; *With* a condition thereunder written for making void the same, if the said [*grantor*], [*surety*], and [*other surety*], or any or either of them, or their, any, or either of their heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural life of him the said [*grantor*], one annuity or yearly sum of pounds, of lawful money of Great Britain, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say, on the day of , the day of , the day of , and the day of in every year, by even and equal portions, the first payment thereof to begin and be made on the day of next ensuing the date of the said bond or obligation now in recital: *And also* if the heirs, executors, or administrators of the said [*grantor*], or the said [*surety*], and [*other surety*], or either of them, their or either of their heirs, executors, or administrators, should well and truly pay, or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, in case the said [*grantor*] should happen to depart this life on any day on which any quarterly payment of the said annuity or yearly sum of pounds should become due, the whole of such quarterly payment; And if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum of pounds should have become due, then a proportionable part of the quarterly payment of the said annuity or yearly sum of

Recital of bond from three to one, for paying annuity.

(*a*) *Vide ante*, 502 (*a*).

GRANT AND COVENANT, WITH TWO SURETIES; DEFEAZANCE, &c.

pounds, to be computed from the day of the date of the above written bond or obligation, to the day of the death of the said [*grantor*]; But in case any quarterly payment of the said annuity or yearly sum of pounds should have become due at the time of the decease of the said [*grantor*] then from such of the said quarterly days of payment of the said annuity, or yearly sum of pounds as should happen to be next and immediately preceding the day of the decease of the said [*grantor*] to the day of his decease. AND WHEREAS in further pursuance of the said agreement, the said [*grantor*], [*surety*], and [*other surety*], have executed a warrant of attorney, bearing even date with the said bond or obligation, and these presents, thereby authorizing and empowering certain attornies therein named, to confess a judgment against them in his Majesty's Court (of King's Bench, at Westminster), in an action of debt upon the said bond, for the said sum of [*double the purchase money*] pounds, and costs of suit; [As by the said bond or obligation and warrant of attorney, reference being thereunto respectively had, may more fully and at large appear.] NOW THIS INDENTURE WITNESSETH, that in further pursuance of the said agreement, and for and in consideration of the sum of pounds of lawful money of Great Britain and Ireland, by the said [*grantee*], in hand well and truly paid to the said [*grantor*], at or before the sealing and delivery of these presents, [in notes (*b*) of the Governor and Company of the Bank of England, payable to bearer on demand;] the receipt of which said sum of pounds, he the said [*grantor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth acquit, release, and for ever discharge the said [*grantee*], his executors, administrators, and assigns, and every of them by these presents: *And also* for and in consideration of the sum of ten shillings to each of them the said [*surety*], and [*other surety*], in hand well and truly paid by the said [*grantee*], at or before the sealing and delivery of these presents; the receipt whereof, they the said [*surety*]

Recital of warrant of attorney.

Testatum,

(*b*) *Vide ante*, 460 (*a*).

GRANT AND COVENANT, WITH TWO SURETIES; DEFEAZANCE, &c.

and [*other surety*] do, and each of them doth hereby acknowledge; THEY the said [*grantor*], [*surety*], and [*other surety*], *have*, and each and every of them *hath* given, granted, bargained, sold, and confirmed; *And* by these presents *do*, and each and every of them *doth* give, grant, bargain, sell, and confirm unto the said [*grantee*], his executors, administrators, and assigns, for and during the natural life of him the said [*grantor*], ONE annuity or yearly sum of pounds of lawful money of Great Britain and Ireland: TO HAVE, hold, receive, take, and enjoy, the said annuity or yearly sum of pounds, hereby given, granted, and confirmed, or intended so to be, and every part thereof, henceforth, for and during the natural life of him the said [*grantor*] (*c*), to be paid and payable unto the said [*grantee*], his executors, administrators, and assigns, by four equal quarterly payments in the year, that is to say, the day of , the day of , the day of , and the day of in every year, by even and equal portions; the first payment thereof to begin and be made on the day of next ensuing the date of these presents, without any deduction or abatement whatsoever thereout, or out of any part thereof, for or in respect of any taxes, charges, rates, assessments, or other impositions whatsoever, now or hereafter to be taxed, charged, rated, assessed, or imposed, upon the said annuity or yearly sum of pounds, or any part thereof, or on the said [*grantor*], [*surety*], and [*other surety*], or any or either of them, or the said [*grantee*], his executors, administrators, or assigns, or any or either of them in respect thereof by authority of parliament, or otherwise howsoever; *Together* with a proportional part of the quarterly payment of the said annuity or yearly sum of pounds, for the time which shall elapse between the last of the said days of payment preceding the day of the decease of the said [*grantor*], to the day of such his decease, as in the condition to the said hereinbefore in part recited bond or obli-

Grant of annuity by three to one.

(*c*) *Vide ante*, 628.

GRANT AND COVENANT, WITH TWO SURETIES; DEFEAZANCE, &c.

gation is mentioned. AND THE SAID (*d*) [*grantor*], [*surety*], and [*other surety*], do hereby for themselves, their heirs, executors and administrators, jointly; *and* any two (*e*) of them, separately and apart from the other of them, do hereby for themselves, their heirs, executors, and administrators, jointly; *and* each of them, separately and apart from the others and other of them, doth hereby for himself, his heirs, executors, and administrators, severally covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns; that they the said [*grantor*], [*surety*,] and [*other surety*], or some or one of them, or their, some, or one of their heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural life of the said [*grantor*], the said annuity or yearly sum of pounds, free and clear of and from all taxes, charges, rates, and other deductions whatsoever, parliamentary or otherwise, on the days and times, and in manner and form hereinbefore limited and appointed for the payment thereof, together with such proportional part thereof as aforesaid, as in the condition of the said hereinbefore recited bond or obligation is mentioned. AND *it is hereby agreed and declared*, that the judgment so to be entered up against the said [*grantor*], [*surety*], and [*other surety*] as aforesaid, is intended and shall be considered only as a further security to the said [*grantee*], his executors, administrators, and assigns, for the said

Covenant to pay annuity from three to one jointly, and any two separate from the other jointly, and each of them severately.

Defeazance on judgment.

(*d*) If there be only one surety, the covenant may be,

Covenant to pay annuity from two to one, jointly and severally.

"AND THE SAID [*grantor*] and [*surety*], do hereby for themselves, their heirs, executors, and administrators; *and* each of them doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns; that they the said [*grantor*] and [*surety*], or one of them, their or one of their heirs, executors, or administrators, shall and will, &c." *ut supra*.*

* See form of a bond from two to one, *ante*, 480.

(*e*) *Vide ante*, 311, (*a*); 502, (*a*).

annuity or yearly sum of pounds; *And* that no execution or executions shall be issued or taken out upon the said judgment, unless and until the same annuity or yearly sum, or some part thereof, shall be in arrear or unpaid for the space of twenty-one days; *And* that in case, and when and so often as the said annuity or yearly sum, or any part thereof, shall be in arrear or unpaid for the space of twenty-one days next after any of the said days or times on which the same ought to be paid as aforesaid, then, and so often, it shall and may be lawful for the said [*grantee*], his executors, administrators, or assigns, to sue out such execution or executions upon or by virtue of the said judgment, as he or they shall think fit, for the recovery of the arrears of the said annuity or yearly sum, and all expences, if any, to be occasioned by the nonpayment thereof; And that it shall not be necessary for the said [*grantee*], his executors, administrators, or assigns, to revive, or cause the said judgment to be revived, or to do any act, matter, or thing, to keep the same on foot, notwithstanding the said judgment shall have been entered on record for the space of one year or upwards; *and* notwithstanding any rule or practice of the said court of King's Bench to the contrary: *And* that they the said [*grantor*], [*surety*], and [*other surety*], any or either of them, their, any, or either of their heirs, executors, administrators, or assigns, shall not, nor will have, take, receive, or attempt, by any ways or means, to have or receive any advantage for want of reviving or keeping the said judgment on foot. AND THE SAID [*grantee*] doth for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantor*], [*surety*], and [*other surety*], and each and every of them, their and each and every of their heirs, executors, and administrators, that in case the said [*grantor*], [*surety*], and [*other surety*], any or either of them, or the heirs, executors, or administrators of either of them the said [*surety*] and [*other surety*], should be minded or desirous of repurchasing the said annuity or yearly sum of pounds; and of such their or his intention, should give months notice in writing unto the said [*grantee*], his executors, administrators, or assigns, then, and in such case he

GRANT AND COVENANT, WITH TWO SURETIES; DEFEAZANCE, &c.

Power to repurchase, where there are two sureties.

GRANT AND COVENANT, WITH TWO SURETIES; DEFEAZANCE, &c.

the said [*grantee*], his executors, administrators, or assigns, upon the expiration of the said months, for which such previous notice shall be so given as aforesaid, on receiving full payment of the said annuity or yearly sum of pounds, and all arrears thereof up to and including the day of repurchasing the same, together with a proportional part of the same annuity in case such repurchase should be made on any other day than one of the said quarterly days of payment, for the time which shall have elapsed from the then last preceding quarterly day of payment, up to and including the day of such repurchase; And all and every sums and sum of money, if any, which shall be then due for or on account of any expences occasioned by the nonpayment thereof, accept and take the sum of pounds, of lawful money of Great Britain and Ireland, in full, for the repurchase of the said annuity or yearly sum of pounds: *And* the said [*grantee*], his executors, administrators, and assigns, shall and will thereupon, at the costs and charges in the law of the person or persons requiring the same, release, assign, or otherwise dispose of the same annuity or yearly sum, and all the securities for the same, as the person or persons making such repurchase shall in that behalf direct or appoint. IN WITNESS, &c.

GRANT OF ONE ANNUITY TO SECURE ANOTHER; COVENANT TO LEVY A FINE SUR CONCESSERUNT, &c.

GRANT *of an* ANNUITY *to which a married Woman is entitled for Life under a Will, as a Security for an Annuity of less Amount granted by her Husband;* COVENANT *to levy a Fine* SUR CONCESSERUNT *for Life, of the Annuity; Power to* REPURCHASE, &c.

THIS INDENTURE, made the day of , in the year *George* the *fourth*, &c. and in the year of our Lord, 18 ; BETWEEN [*grantor*], of, &c. and [*Mary*] his wife, (formerly [ ], widow and relict of [*testator*], late of, &c. deceased) of the one part, and [*grantee*], of, &c. of the other part. WHEREAS the said [*testator*], by his last will and testament in writing duly executed and attested, for the devise of lands of inheritance, and bearing date on or about the day of 18 , gave and devised to his brother [*devisee*], his heirs and assigns, all his messuages, tenements, lands, and hereditaments, situate in the said county of , with their and every of their appurtenances, *Upon condition* nevertheless that he the said [*devisee*], his heirs or assigns, should well and truly pay or cause to be paid thereout unto his the said testator's wife the said [*Mary*, (then [*Mary*)] or her assigns, one annuity or clear yearly sum of [*sixty*] pounds for and during the term of her natural life, by four equal quarterly payments in the year, that is to say; on the day of , the day of , the day of , and the day of in every year, the first quarterly payment thereof to become due and be made on such one of the said days as should next happen after his the said testator's decease; such payments to be made clear of all taxes and deductions whatsoever, in lieu of all her dower and thirds in his real estates; being the annuity which was charged by him upon the said hereditaments and premises, in and by an indenture bearing date the day of

Parties.

Recital of a will, whereby estates were devised, upon condition of the devisee paying devisor's wife an annuity, being the annuity assigned by this deed.

GRANT OF ONE ANNUITY TO SECURE ANOTHER; COVENANT TO LEVY A FINE SUR CONCESSERUNT, &c.

then last past. AND WHEREAS the said [*grantee*] hath contracted and agreed with the said [*grantor*] for the purchase of an annuity or yearly sum of [*fifty*] pounds, to be paid to the said [*grantee*], his executors, administrators, and assigns, free from taxes and clear of all other deductions whatsoever for and during the life of the said [*wife*], and to be secured in manner hereinafter mentioned, at or for the price or sum of hundred and pounds. AND WHEREAS the said [*grantor*], by his bond or obligation in writing under his hand and seal, bearing even date with these presents, hath become bound unto the said [*grantee*], in the penal sum of [*double the purchase money*] pounds; with a *condition* thereunder written for making the same void, if the said [*grantor*], his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural life of the said [*Mary*], *One* annuity or yearly sum of [*fifty*] pounds, of lawful money of Great Britain and Ireland, free from taxes, and clear of all other deductions whatsoever, on four days, or times in the year, that is to say; the day of , the day of , the day of , and the day of , in every year, by even and equal portions; the first payment thereof to begin and be made on the day of , next ensuing the date of the same bond or obligation: *And also* if the said [*grantor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, in case the said [*Mary*] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of [*fifty*] pounds should become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum should have become due. Then a proportional part of the quarterly payment of the said annuity or yearly sum of [*fifty*] pounds, to be computed from the day of the date of the same bond or obligation, to the day of the death of the said [*Mary*]; *But* in case any quarterly payment of such annuity or

Recital of contract for purchase of annuity.

Recital of bond for

payment of annuity,

quarterly;

with proportional part.

yearly sum of [*fifty*] pounds should have become due at the time of the decease of the said [*Mary*], then from such of the said quarterly days of payment of the said annuity or yearly sum of [*fifty*] pounds, as should happen to be next and immediately preceding the day of the death of the said [*Mary*], to the day of her decease. AND WHEREAS the said [*grantor*] hath executed a warrant of attorney, bearing even date with the said bond and these presents, thereby authorizing and empowering certain attornies therein-named to confess a judgment against him in his Majesty's court of , at Westminster, in an action of debt upon the said bond, for the sum of [*double the purchase money*] pounds, and costs of suit; *And* it is intended and agreed that judgment shall be immediately entered thereupon accordingly. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of hundred and pounds of lawful money of Great Britain and Ireland, by the said [*grantee*] to the said [*grantor*] and [*Mary*] his wife or one of them, well and truly paid, at or immediately before the sealing and delivering of these presents [in (*a*) notes of the Governor and Company of the Bank of England, expressed to be payable to bearer on demand]; the receipt and payment whereof they the said [*grantor*] and [*Mary*] his wife, do and each of them doth hereby admit and acknowledge; and of and from the same and every part thereof do and each of them doth hereby acquit, release, and discharge the said [*grantee*], his heirs, executors, administrators, and assigns, and every of them; THEY the said [*grantor*] and [*Mary*] his wife *have* and each of them *hath* granted, bargained, sold and assigned; *And* by these presents *do* and each of them *doth* grant, bargain, sell, and assign unto the said [*grantee*], his heirs, and assigns, THE said annuity, yearly rent-charge, or sum of [*sixty*] pounds by the will of the said [*testator*] deceased given and devised to the said [*Mary*], then [*Mary*], and her assigns, for her life, as hereinbefore is mentioned: AND all remedies and powers whatsoever requisite or necessary for the recovery thereof, and the obtaining and getting

GRANT OF ONE ANNUITY TO SECURE ANOTHER; COVENANT TO LEVY A FINE SUR CONCESSERUNT, &c.

Recital of warrant of attorney to confess judgment.

Testatum.

Transfer of annuity given by will.

(*a*) *Vide ante*, 460 (*a*).

GRANT OF ONE ANNUITY TO SECURE ANOTHER; COVENANT TO LEVY A FINE SUR CONCESSERUNT, &c.

in the same; AND all the estate, right, title, interest, property, claim and demand whatsoever, of them the said [*grantor*] and [*Mary*] his wife, or either of them, of, in, to, or out of the same sum of [*sixty*] pounds, and every or any part thereof. To HAVE, hold, receive, perceive, and take the said annual sum of [*sixty*] pounds, hereby assigned or intended so to be, and all other the premises hereby granted, bargained, sold, and assigned, or expressed and intended so to be, with the appurtenances unto the said [*grantee*], his heirs and assigns, for and during the natural life of the said [*Mary*]; *Upon the trusts* hereinafter mentioned of and concerning the same. AND THE SAID [*grantor*,] for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*grantee*], his heirs, executors, administrators and assigns, that they the said [*grantor*] and [*Mary*] his wife shall and will, at the request of the said [*grantee*], his executors, administrators, or assigns, but at the costs and charges of the said [*grantor*], as of this present Hilary term, or as of or in some subsequent term, acknowledge and levy in due form of law before his Majesty's justices of the Court of Common Pleas at Westminster unto the said [*grantee*] and his heirs, a fine *Sur concesserunt* (*b*), according to the usual course, order, and manner of fines in like cases used and accustomed, of the said annuity, yearly rent-charge, or sum of [*sixty*] pounds, by such names and descriptions as shall be sufficient to comprise the same. AND *it is hereby agreed and declared* by and between the said parties hereto, that the said fine so as aforesaid or in any other manner, or at any other time or times to be acknowledged and levied; and all and every other fines and fine whatsoever already acknowledged and levied, or hereafter to be acknowledged and levied of the said annuity, yearly rent-charge, or sum of [*sixty*] pounds, or any part thereof, by or between the said parties to these presents or any of them, or whereunto they or any of them are or shall be parties or privies, party or privy, shall be and enure, and shall be adjudged, construed, deemed, and taken to be and enure, *To the use* of the said [*grantee*], his heirs and assigns, during the life of the said [*Mary*]. AND *it is hereby*

All remedies.

All the estate.

Habendum.

Covenant by husband, that he and his wife will levy a fine *sur concesserunt* of an annuity given by will.

Declaration of the uses of the fine.

(*b*) Proclamations in this case are unnecessary, *vide ante*, 251, (c).

GRANT OF ONE ANNUITY TO SECURE ANOTHER; COVENANT TO LEVY A FINE SUR CONCESSERUNT, &c.

agreed and declared that the said [*grantee*], his heirs and assigns, shall stand seised and be possessed of the said annuity, yearly rent-charge, or sum of [*sixty*] pounds, UPON TRUST, that he the said [*grantee*], his heirs and assigns, shall and do by, with, and out of the same, from time to time retain and pay to himself and to his executors, administrators, and assigns, the annuity of [*fifty*] pounds hereby and by the said bond or obligation secured, or intended so to be, and all costs, charges, and expences occasioned by the non-payment thereof, or by the trusts hereby created, or any of them: *And* do and shall pay all the surplus and residue of the said annual sum of [*sixty*] pounds, which shall remain after or not be applied for or upon answering the trusts aforesaid, to such persons, and for such intents and purposes, as the said [*grantor*] and [*Mary*] his wife shall by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by them sealed and delivered in the presence of and to be attested by two or more credible witnesses, from time to time, direct or appoint; *And* in default of such direction and appointment, do and shall pay the surplus or residue of the said annual sum of [*sixty*] pounds to, or permit the same to be received by the said [*Mary*] and her assigns during the term of her natural life. AND THE SAID [*grantor*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that they the said [*grantor*], and [*Mary*] his wife, or one of them, their or one of their heirs, executors, or administrators, shall and will well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, and assigns, the said annuity of [*fifty*] pounds, in the shares and proportions, and on the days or times in the said bond or obligation and hereinbefore mentioned for payment thereof: AND ALSO that she the said [*Mary*] shall and will once a year, or oftener if it should be thought necessary, upon the request of the said [*grantee*], his executors, administrators, and assigns, but at the costs and charges of them the said [*grantor*] and [*Mary*] his wife, or one of them, appear in person at some insurance office in London or Westminster, to be for that purpose appointed by the

Declaration that annuity assigned was upon trust to secure the annuity granted.

Surplus of annuity assigned to be paid as grantor and wife shall appoint.

In default of appointment, to grantor's wife for life.

Covenant to pay the annuity granted.

Covenant from the grantor, that his wife shall appear at insurance office, &c. in order that grantee might, insure her life.

GRANT OF ONE ANNUITY TO SECURE ANOTHER; COVENANT TO LEVY A FINE SUR CONCESSERUNT, &c.

said [*grantee*], his executors, administrators, or assigns, or otherwise send the said [*grantee*], his executors, administrators, or assigns, notice of her place of abode, and such vouchers as the office may require, respecting her state of health, from time to time; in order to enable him the said [*grantee*], his executors, administrators, and assigns, to insure the life of her the said [*Mary*] at such insurance office; *And also* that the said [*Mary*] shall and will thereupon answer such questions, and otherwise act and demean herself therein, as may be necessary to enable the said [*grantee*], his executors, administrators, or assigns, to effectuate such insurance. AND THE SAID [*grantor*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*grantee*], his heirs, executors, administrators, and assigns, that the said annuity, yearly rent-charge, or sum of [*sixty*] pounds, is good and subsisting, and is not in anywise revoked, determined, or made void; AND ALSO that he the said [*grantor*] and [*Mary*] his wife have not nor hath either of them, at any time heretofore, assigned, charged, or incumbered the said annuity, yearly rent-charge, or sum of [*sixty*] pounds, or released or discharged the same or any part thereof: AND that they the said [*grantor*] and [*Mary*] his wife have, or one of them hath, good right and lawful authority to assign or otherwise assure the said annuity of [*sixty*] pounds, and other the premises hereby assigned or otherwise assured or intended so to be, with the appurtenances, unto the said [*grantee*], his heirs and assigns, upon the trusts and in manner aforesaid, and according to the true intent and meaning of these presents: AND FURTHER that they the said [*grantor*] and [*Mary*] his wife, and each of them, shall and will from time to time, and at all times hereafter during the life of the said [*Mary* ,] upon the reasonable request, and at the costs and charges of the said [*grantee*], his heirs, executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, assignments, letters of attorney, and other assurances in the law whatsoever, for the further, better, more perfectly, and absolutely assigning and assuring the said annuity, yearly rent-charge, or sum of [*sixty*] pounds, and other the premises hereby

Covenant that assigned annuity is subsisting;

that grantor and his wife have not incumbered.

For title.

For further assurance.

assigned, or otherwise assured or intended so to be, and every part thereof, unto the said [*grantee*], his heirs, executors, administrators, or assigns, or for better enabling him or them to recover and receive the same, upon the trusts hereinbefore declared, and according to the true intent and meaning of these presents; *As* by the said [*grantee*], his heirs, executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised or advised and required. AND THE SAID [*grantee*] for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree with and to the said [*grantor*] and [*Mary*] his wife, their executors, administrators, and assigns, that in case they the said [*grantor*] and [*Mary*] his wife, or either of them, or the executors, administrators, or assigns of the said [*grantor*], should at any time or times hereafter be desirous of repurchasing the said annuity or yearly sum of [*fifty*] pounds, and should give notice in writing unto the said [*grantee*], his heirs, executors, administrators, and assigns, of such their, his, or her intention, then and in such case the said [*grantee*], his heirs, executors, administrators, or assigns, shall and will, at the end of three calendar months from the time at which such notice shall be given as aforesaid, on receiving of and from the said [*grantor*] and [*Mary*] his wife, or either of them, their or either of their executors, administrators, or assigns, the said sum of hundred and pounds; and all and every sums and sum of money whatsoever, which shall be then due for or on account of the arrears of the said annuity or yearly sum of [*fifty*] pounds up to the day of repurchasing the same, and all sum and sums of money (if any) which shall be then due for or on account of any costs, charges, and expences occasioned by the non-payment of the said annuity or yearly sum of [*fifty*] pounds; and also an advance of one quarterly payment of the said annuity or yearly sum of [*fifty*] pounds, at the request, and at the proper costs and charges in the law of the person or persons requiring the same, release, assign, or otherwise dispose of the said annuity or yearly sum of [*fifty*] pounds, and also the said annuity, yearly rent-charge, or sum of [*sixty*] pounds, and all other the securities for the said annuity or yearly sum of [*fifty*] pounds hereby granted or expressed

GRANT OF ONE ANNUITY TO SECURE ANOTHER; COVENANT TO LEVY A FINE SUR CONCESSERUNT, &c.

Power to repurchase the annuity granted.

GRANT OF ONE ANNUITY TO SECURE ANOTHER; COVENANT TO LEVY A FINE SUR CONCESSERUNT, &c.

and intended so to be, unto the persons or person repurchasing the same, or as they, he, or she shall in that behalf nominate and appoint: AND ALSO shall and will acknowledge or cause to be acknowledged satisfaction upon the record of the judgment so to be entered up as aforesaid; and do every other act, deed, matter, and thing necessary or adviseable for the avoiding, releasing, assigning, vacating, or discharging, as well the said annuity or yearly sum of [*fifty*] pounds as the said several securities given for securing the payment thereof as aforesaid; *As* by the persons or person repurchasing the same, their, his, or her counsel in the law, shall be reasonably advised or devised. *(Add defeazance on judgment,* ut ante, 531.) IN WITNESS, &c.

GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

GRANT *of* ADDITIONAL ANNUITY *for the Lives of* TWO NOMINEES, *by Indorsement on the original Grant; charged on a* LEASEHOLD (*a*) *Estate thereby assigned to Trustees, upon Trusts for securing the original Annuity; and to be secured by the same Powers and Remedies as are thereby given to Trustees for securing the original Annuity: with additional Power of Distress; Covenants to join in Conveyances to Purchasers, and for Insurance against Fire: Declaration that the Judgment to be entered on the original Warrant of Attorney, is to be a Security for additional Annuity; with Power to sue Execution on Judgment, after default in paying additional Annuity, and Agreement as to Reviver of Judgment; Power to Repurchase; and Power for Trustees to reimburse themselves.*

THIS INDENTURE, made the day of in the year, &c. *George* the *fourth*, &c. and in

(*a*) [Upon an annuity granted, secured upon leasehold houses, on which it was agreed that part of the consideration money was to be expended, and retained for that purpose in the hands of the attorney of the grantee, it was held, that the court has a discretionary power in such cases, under sec. 6. of the 53 Geo. III. c. 141. (which see p. 333), and that, under the circumstances, there was no ground for setting aside the annuity. *Barber* v. *Gamson*, 4 B. & A. 281.—*Ed.*]

GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

the year of our Lord 18 ; BETWEEN the within-named [*grantor,*] of the one part, and the within-named [*grantee,*] of the other part. WHEREAS the said [*grantee,*] hath contracted and agreed with the said [*grantor,*] for the purchase of an annuity or yearly sum of pounds, payable during the lives of the within-named [*two nominees*], and during the life of the longest liver of them, at or for the price or sum of pounds ; AND WHEREAS upon the treaty for the purchase of the said annuity, it was agreed that the same should be charged upon the pieces or parcels of ground, messuages or tenements, and premises (*a*) within-mentioned and described; *And* that the same annuity should be further secured by the judgment to be entered up upon the within recited warrant of attorney; NOW THIS INDENTURE WITNESSETH, that for and in consideration of the sum of hundred pounds of lawful money of Great Britain and Ireland [in notes (*b*) of the Governor and Company of the Bank of England, payable to the bearer on demand], paid by the said [*grantee*] to the said [*grantor,*] on the day of now last past; the receipt whereof he the said [*grantor*] doth hereby acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and discharge the said [*grantee,*] his executors, administrators, and assigns ; HE the said [*grantor*] hath granted and confirmed ; and by these presents doth grant and confirm, unto the said [*grantee*], his executors, administrators, and assigns (*c*) an annuity or yearly sum of pounds of lawful money of Great Britain and Ireland, as the same is current in England, to be paid and payable during the natural lives of the said [*two nominees,*] and during the

Parties.

Recital of contract for purchasing additional annuity ; to be charged on premises charged with original annuity ; and further secured by judgment on original warrant of attorney.

Testatum.

Consideration previously paid

Grant of additional annuity ;

(*a*) The property being leasehold, the word *hereditaments* instead of *premises*, would not be technically correct: because the word *hereditament*, in the most usual and proper sense, is applied only when the estate therein is of freehold or inheritance, and which not being devised descends to the *heir ;* and is not applied to a chattel interest, for that vests in the executor or administrator. Noy's Tenures, 54; 6th ed. 356. Cowel's Interpreter, tit. *Hereditaments.*

The word *hereditament* is not applied to a chattel interest.

(*b*) *Vide ante*, 460 (*a*).

(*c*) As this annuity is charged on a leasehold estate, there does not appear to be any objection to the grant of it to executors and administrators, *pur auter vie*. *Vide ante*, 628.

GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

life of the longest liver of them; and to be charged and chargeable upon, and issuing and payable out of the pieces or parcels of ground, messuages or tenements, and premises, mentioned and described in the within-written indenture; and to be paid and payable to the said [*grantee*], his executors, administrators, and assigns, in the Common Dining Hall of Lincoln's Inn, in the county of Middlesex, by two equal half-yearly payments in the year, that is to say; on the day of , and the day of , in each and every year, by even and equal portions, the first payment thereof to begin and be made on the day of next ensuing the date hereof; *Together* with a proportional part of the said annuity or yearly sum of pounds, up to and including the day of the death of the longest liver of them the said [*two nominees*]; such proportional part to be paid and payable immediately after the decease of such longest liver. To HOLD, receive, perceive, and take the said annuity or yearly sum of pounds, and every part thereof, unto the said [*grantee*], his executors, administrators, and assigns, for and during the natural lives of the said [*two nominees*], and during the life of the longest liver of them, free from all taxes, deductions, and abatements thereout whatsoever. AND for the better and more effectually securing the due payment of the said annuity or yearly sum of pounds, *he* the said [*grantor*], *doth* give and grant unto the said [*grantee*], his executors, administrators, and assigns, full power and authority, when and so often as the said annuity or yearly sum of pounds, or any part thereof, shall be in arrear and unpaid by the space of fourteen days next after any of the said days or times appointed for payment thereof, to enter into and upon the pieces of ground, messuages or tenements, and premises within-mentioned and described, or into and upon any part thereof, and there to take and distrain any goods, chattels, and effects which may be found thereon; and in making any such distress or distresses, to act therein in all respects as landlords are entitled to do in making distresses for rent in arrear; To the intent that by such distress or distresses, or otherwise, all arrears of the said annuity or yearly sum of pounds, and all costs, charges, damages, and

charged on premises within-mentioned;

and payable half yearly.

Habendum.

Power of distress.

GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

expences, which the said [*grantee*], his executors, administrators, or assigns, may sustain, or be put unto, by reason of the nonpayment of the said annuity or yearly sum, or any part thereof, on the days or times appointed for payment of the same, and also all expences attending the making of any such distress or distresses may be fully paid and satisfied. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, or some or one of them, shall and will from time to time, and at all times hereafter, during the lives of the said [*two nominees*], and during the life of the longest liver of them, well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of pounds, on the days or times hereby appointed for payment thereof, without making any deduction or abatement thereout whatsoever.

Covenant to pay annuity.

AND *it is hereby declared and agreed*, by and between the parties hereto, that the within-named [*two trustees*], or the survivor of them, his executors and administrators, and the trustees and trustee for the time being acting in the trusts of the within-written indenture, shall stand and be possessed of the pieces or parcels of ground, messuages or tenements, and premises within-mentioned and described, with their and every of their appurtenances, as well for the purpose of securing the payment of the said annuity or yearly sum of pounds hereby granted, as for securing the payment of the within-mentioned annuity or yearly sum of hundred and pounds.

Trustees to stand possessed of premises upon trust to secure additional annuity;

AND *it is also agreed*, that for the purpose of securing the payment of the said annuity or yearly sum of pounds, the said [*two trustees*], and the survivor of them, and the executors and administrators of such survivor, and the trustees and trustee for the time being acting in the trusts of the within-written indenture, shall in all respects have such and the same powers and authorities as are given to them by the within-written indenture, for the purpose of securing the within-mentioned annuity or yearly sum of hundred and pounds, any thing in the within-written indenture contained to the

and to have same powers for securing additional annuity as they have for securing original annuity.

GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

contrary thereof notwithstanding. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that in case any sale should be made of the pieces or parcels of ground, messuages or tenements, and premises within-mentioned and described, or of any part or parcel thereof, for the purpose of providing for the payment of the said annuity or yearly sum of pounds, that then and in such case, he the said [*grantor*], his executors, administrators, or assigns, shall and will, if requested, join and concur in the making thereof, and in executing the assignments and assurances of the premises which may be so sold to the purchaser or purchasers thereof, and enter into all usual and reasonable covenants with such purchaser or purchasers, his, her, or their executors, administrators, and assigns, for the estate, title, possession, and further assurance of the premises which may be so sold, and do all other reasonable acts for confirming such sale or sales: NEVERTHELESS (*c*) *it is hereby declared*, that the concurrence of the said [*grantor*], his executors, administrators, or assigns, in any such sale or sales, assignments or assurances, shall not in anywise be deemed or considered as essential or necessary to perfect the title of such purchaser or purchasers; the same being only intended for his, her, or their more perfect satisfaction. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby further covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, shall and will from time to time, and at all times hereafter, so long as the said annuity or yearly sum of pounds shall remain payable, insure and keep insured, in some good public fire insurance office in London or Westminster, upon the messuages or tenements, and buildings within mentioned and described, the sum of pounds over and above the within mentioned sum of hundred pounds, within agreed to be insured thereon, so long as the within mentioned annuity of hundred and

Covenant by grantor to join in conveyances to purchasers, and enter into usual covenants with them:

but such concurrence not to be considered as necessary to perfect the title.

Covenant to insure buildings from fire in an additional sum;

(*c*) *Vide, ante*, 569—573.

pounds continues payable: AND that he the said [*grantor*], his executors, administrators or assigns, at his or their own expense, shall and will, immediately upon the making and renewing of every policy of such insurance, assign the same and the benefit thereof (*d*) unto the said [*grantee*], his executors, administrators, or assigns: PROVIDED ALWAYS, *and it is hereby declared and agreed*, that if the said [*grantor*], his heirs, executors, or administrators, should at any time during the continuance of the said annuity or yearly sum of pounds, refuse or neglect to insure the said sum of pounds (over and above the said sum of hundred pounds, so long as the said annuity of hundred and pounds continues payable) or to make such assignment (*d*) of the policy or policies so to be made and taken as aforesaid; then and so often it shall and may be lawful for the said [*grantee*], his executors, administrators and assigns, in like manner to insure the said sum of pounds, or any less sum, (over and above the said sum of hundred pounds, so long as the said annuity or yearly sum of hundred and pounds shall continue payable,) and for such length of time as he or they shall think proper: AND *it is hereby declared and agreed*, that all sums of money which shall be recoverable on any such policy of insurance as aforesaid, shall forthwith be laid out and expended in rebuilding or repairing the premises insured, or such of them as may be destroyed or injured by fire, in order the better to secure the due payment of the said annuity or yearly sum of pounds. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, shall and will, upon demand in writing left at his or their usual place or places of abode, pay and satisfy unto the said [*grantee*], his executors, administrators, or assigns, the premiums, costs, and charges which he the said [*grantee*], his executors,

GRANT OF ADDITIONAL ANNUITY BY INDORSMENT.

and to assign policies to grantee. If grantor neglect, grantee may insure.

Monies to be received under policies to be expended in rebuilding premises.

Covenant by grantor to repay sums paid by grantee for insurance.

(*d*) To prevent the trouble and expence of assigning the policy of insurance, it seems to be advisable for the grantor to covenant to effect the insurance in the name of the grantee, his executors, administrators, and assigns; but the above precedent is the most usual form.

GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

administrators, or assigns, or any of them, shall expend or be put unto in or about the making or effecting of any such insurance as aforesaid, or in or about the receiving or recovering of the money thereby recoverable. AND *it is hereby declared and agreed,* that in case the said [*grantor*], his heirs, executors, or administrators, should make default in payment of such last mentioned costs, charges, and expences, by the space of fourteen days next after any such demand shall be made as aforesaid, then and in every such case, the same, with interest thereupon after the rate of five pounds per centum per annum, from the respective times at which the said [*grantee*], his executors, administrators, or assigns, or any of them, shall pay or expend, the same, shall be levied and raised, either by distress, or in such other way as is hereinbefore mentioned or referred to, with respect to the arrears of the said annuity or yearly sum of pounds, any thing hereinbefore contained to the contrary thereof notwithstanding. AND *it is hereby declared and agreed,* by and between the parties hereto, that the judgment to be entered up upon the within recited warrant of attorney shall be considered as a security as well for the payment of the said annuity or yearly sum of pounds hereby granted, as for the payment of the within mentioned annuity or yearly sum of hundred and pounds, any thing contained in the within-written indenture to the contrary notwithstanding. AND *it is also agreed,* that when and so often as the said annuity or yearly sum of pounds, or any part thereof, shall be in arrear and unpaid by the space of twenty-one days next after any of the days or times appointed for payment thereof, then and in every such case it shall be lawful for the said [*grantee*], his executors, administrators, and assigns, to sue such execution or executions upon the said judgment, as he or they shall think fit or be advised, for the recovery of the arrears of the said annuity or yearly sum of pounds, and all costs, charges, and expences, which he the said [*grantee*], his executors, administrators, or assigns, or any of them, shall sustain or be put unto by reason or in consequence of the non-payment thereof. AND *it is also agreed,* that it shall not be necessary to revive or cause the said judgment to be revived, or to do any act, matter, or thing to keep the same

Power to grantor to recover sums paid for insurance by distress, &c.

Judgment to be entered on original warrant of attorney, to be a further security for additional annuity.

Power to sue execution on judgment after default in paying additional annuity.

Without reviving judgment.

GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

on foot, notwithstanding the same shall have been entered on record for the space of one year or upwards, and notwithstanding any rule or practice of the court in which the said judgment shall be entered on record to the contrary. PROVIDED ALWAYS, *and it is hereby declared and agreed*, that in case the said [*grantor*], his heirs, executors, or administrators, should at any time hereafter be minded and desirous of repurchasing the said annuity or yearly sum of pounds, and of such his or their intention should give unto the said [*grantee*], his executors, administrators, or assigns, notice in writing, by the space of six calendar months, or leave the same at his or their usual place or places of abode, then and in such case the said [*grantee*], his executors, administrators, or assigns, shall and will, at the expiration of the said period of six calendar months, on receiving all sums of money which shall be due for arrears of the said annuity, together with a proportional part of the same annuity, from the last day of payment next preceding such repurchase up to and including the day of repurchasing the same, accept and take the sum of pounds in full for the repurchase of the said annuity or yearly sum of pounds: *And* on receipt of the said sum of pounds, and all arrears of the said annuity, and such proportional part thereof as aforesaid, the said annuity or yearly sum of pounds, and every part thereof, and all powers and authorities herein contained for enforcing the payment thereof, shall cease, determine, and be absolutely void, any thing herein contained to the contrary thereof notwithstanding. AND *it is hereby declared and agreed*, that the said *two* [*trustees*,] and the survivor of them, and the executors and administrators of such survivor, and the trustees and trustee for the time being acting in the trusts hereof, shall and may out of the said trust monies, and premises, reimburse themselves and himself respectively, all such costs, charges, and expences, as they or he may be put unto in the execution of the trusts hereby created. IN WITNESS, &c.

Power to repurchase.

Power to trustees to reimburse themselves all expences.

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

GRANT *by* APPOINTMENT *under the usual limitation to prevent Dower, and* RELEASE *in Fee by the Grantor and his Trustee to prevent Dower,* TO THE USE *that the Grantee, his Executors, Administrators, and Assigns, may receive an* ANNUITY *for the Lives of Three Nominees, or for Ninety-nine Years, if Three Nominees should so long live; with Powers of* DISTRESS *and* ENTRY *by way of Use;* TRUSTS FOR SALE; DEFEAZANCE *on the Judgment to be entered under a Warrant of Attorney to confess Judgment on the Annuity Bond; Power to* REPURCHASE.

THIS INDENTURE, made the day of , [in the year of the reign, &c. *George* the *fourth*, &c. and] in the year of our Lord 18 ; BETWEEN [*grantor*], of, &c. of the first part; [*trustee to prevent dower*], of, &c. of the second part; [*grantee*], of, &c. of the third part; and [*trustee for sale*, &c.] of, &c. of the fourth part. WHEREAS by indenture of lease and indenture of appointment and release (*or* indentures of lease and release), the indenture of (appointment and) release being made or expressed to be made between [*vendor*], of, &c. of the first part; ([*vendor's trustee to prevent dower*], of, &c. of the second part;) the said [*grantor*], of the third part; and the said [*trustee to prevent dower*], of the fourth part; the several messuages, tenements, lands, hereditaments, and premises hereinafter particularly mentioned and intended to be hereby appointed, granted, and released, with their appurtenances, were (appointed) conveyed or assured, and now stand limited *To the use* of such person or persons,

Parties.

Recital of lease and appointment, and release to uses to prevent dower.

for such estate or estates, absolute or conditional, and with or without power of revocation and new appointment, and with, under, and subject to such powers, provisoes, conditions, and declarations, and for such intents and purposes, and in such manner in all respects as the said [*grantor*], by any deed or deeds, writing or writings, to be sealed and delivered by him, in the presence of, and to be attested by, two or more credible witnesses, or otherwise, as in the same indenture of (appointment and) release is mentioned, shall direct, limit, or appoint the same: *And* in default of such direction, limitation, or appointment, and in the mean time subject thereto, *To the use* of the said [*grantor*] and his assigns for his life [without impeachment of waste]; with remainder, *To the use* of the said [*trustee to prevent dower*] and his heirs, during the life of the said [*grantor*], *In trust* for him the said [*grantor*] and his assigns, during his life; with remainder, *To the use* of the said [*grantor*], his heirs and assigns for ever. AND WHEREAS the said [*grantee*] hath contracted and agreed with the said [*grantor*] for the purchase of one annuity or yearly rent-charge or sum of pounds, of lawful money of Great Britain and Ireland, to be paid to the said [*grantee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during (*a*) the natural lives of [*three nominees*], of, &c. and the lives and life of the survivors and survivor of them: *And* upon the treaty for the sale of the said annuity of pounds, it was agreed that the same should be secured by the bond or obligation of the said [*grantor*], and a warrant of attorney for entering up a judgment thereon; and also by the covenant of the said [*grantor*], for payment of the same

GRANT BY APPOINTMENT AND RELEASE TO USES; TRUSTS FOR SALE, &c.

Recital of contract for purchase of annuity for three lives:

to be secured by bond, warrant of attorney, covenant, and conveyance, upon trusts for sale, &c.

(*a*) As the form in the above precedent is still frequently used, it has been retained: but to avoid the question, stated *ante*, 587—596, whether a rent *pur auter vie* out of a freehold estate, can be effectually limited to the grantee, his executors, administrators, and assigns; it seems preferable to limit the annuity or rent-charge,

" for and during the term of ninety-nine years, if [*three nominees*], of, &c. any or either of them, should so long live; *And* upon the treaty, &c." *ut supra.*

To avoid the question, whether a rent *pur auter vie* can be limited to personal representatives, it seems preferable to grant it FOR YEARS DETERMINABLE ON LIVES.

GRANT BY APPOINTMENT AND RELEASE TO USES; TRUSTS FOR SALE, &c.

as hereinafter contained: *and also* that the same annuity should be further secured by conveying the said several messuages, tenements, lands, hereditaments, and premises, to the uses, upon the trusts, and to and for the intents and purposes hereinafter mentioned, expressed, and declared of and concerning the same: *and also* that the said annuity of pounds might be repurchased upon the terms expressed in the agreement hereinafter inserted in that behalf: *and* (*b*) it was also agreed that the costs and charges of preparing and perfecting the several securities for payment of the said annuity, and of preparing and filing the memorial thereof, should be borne and paid by the said [*grantor*]. (*Recite bond and warrant of attorney*, ut ante, 548, 549)(*c*). NOW THIS INDENTURE WITNESSETH, that for and in consideration of the sum of hundred pounds of lawful money of Great Britain and Ireland, to the said [*grantor*] in hand well and truly paid by the said [*grantee*], [in notes (*d*) of the Governor and Company of the Bank of England, payable to bearer on demand] at or before the sealing and delivery of these presents; the receipt and payment of which said sum of hundred pounds, he the said [*grantor*] doth hereby acknowledge, and of and from the same, and every part thereof, doth acquit, release, and for ever discharge the said [*grantee*], his executors, administrators, and assigns, by these presents,; *He* the said [*grantor*], in pursuance of the power or authority given, limited, or reserved, to him, in or by the said recited indenture of (appointment and) release, and by force and virtue thereof, and of every other power or authority to him given, limited, or reserved, in him vested, or in anywise enabling him in this behalf, *doth* by this deed or instrument in writing, sealed and delivered by him the said [*grantor*], in the presence of, and to be attested by, the two credible persons, whose names are intended to be hereupon indorsed as witnesses attesting the sealing and

to be repurchasable:

costs to be paid by grantee.

Recital of bond and warrant of attorney.

Testatum.

Appointment.

(*b*) *Vide ante*, 460, (*b*).

(*c*) If for years determinable on lives, say,

FOR YEARS DETERMINABLE ON LIVES.

" for and during the term of ninety-nine years, if the said [*three nominees*], any or either of them, should so long live, *One* annuity, &c." *ut ante*, 499; *mutatis mutandis*.

(*d*) *Vide ante*, 460, (*a*).

delivery of these presents by him the said [*grantor*] direct, limit, and appoint, That the said several messuages, tenements, lands, hereditaments, and premises comprised in the said indenture of (appointment and) release, with their and every of their rights, members, and appurtenances, shall henceforth remain, continue, and be, *To the uses*, upon the trusts, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinafter mentioned, expressed, and declared of and concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, That for the consideration aforesaid, and also in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*trustee for sale, &c.*] to the said [*grantor*] and [*trustee to prevent dower*], in hand paid at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said [*trustee to prevent dower*], by way of further assurance, at the request and by the direction of the said [*grantor*], and at the nomination and appointment of the said [*grantee*], testified by their severally executing these presents, *hath* bargained, sold, and released; and by these presents *doth* bargain, sell, and release; *And* the said [*grantor*], by way of further assurance, at the nomination and appointment of the said [*grantee*], testified as aforesaid, *hath* granted, bargained, sold, released, ratified, and confirmed; and by these presents *doth* grant, bargain, sell, release, ratify, and confirm unto the said [*trustee for sale, &c.*] (in his actual possession now being by virtue of a bargain and sale to him thereof made by the said [*grantor and trustee to prevent dower*], in consideration of five shillings each, by indenture, bearing date the day next before the day of the date, and executed before the execution, of these presents, for the term of one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession) and to his heirs (*e*); ALL THOSE several messuages, tenements,

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

To the uses, upon the trusts, &c. after mentioned.

Release by trustee to prevent dower and grantor.

Parcels.

(*e*) When uses are to be declared on the seisin of a releasee or feoffee, the conveyance should be to him and his *heirs*, and not to him, his

A conveyance to uses should be made to the

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

lands, hereditaments, and premises, commonly called or known by the name of , and containing by estimation acres, be the same more or less: *And also* all other the hereditaments, if any, comprised in and conveyed by the said hereinbefore in part recited indenture of lease and indenture of appointment and release (*or* indentures of lease and release), bearing date respectively on or about the and days of 18 , or intended so to be: *All* which said several messuages, tenements, lands, hereditaments, and premises hereinbefore mentioned and described, are situate, lying, and being in the parish of , in the county of . AND all houses, outhouses, buildings, barns, stables, sheds, yards, gardens, orchards, hedges, ditches, mounds, fences, drains, ways, paths, passages, waters, watercourses, trees, woods, underwoods, and the ground and soil thereof, wastes, commons, common of pasture and turbary lights, liberties, easements, profits, privileges, commodities, advantages, emoluments, hereditaments, rights, members, and appurtenances whatsoever, to the said several messuages, tenements, lands, hereditaments, and premises, or any of them, or any part or parcel thereof, belonging or in any wise appertaining or therewith now usually had, held, used, occupied, letten, possessed or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member thereof, or of any part thereof. AND the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits of the same messuages and hereditaments, and every part and parcel thereof. AND all the estate, right, title, interest, use, trust, possession, inheritance, benefit, property, claim, and demand whatsoever, both at law and in equity, of them the said [*grantor*] and [*trustee to prevent dower*], and each of them, of, in, to, or out of the said messuages tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, and every or

And all other hereditaments comprised in lease, appointment, and release.

General words for farms.

And the reversion, &c.

All the estate, &c.

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releasee and his heirs, omitting assigns.

heirs and assigns; for as he is only a conduit-pipe, through whom the uses are to arise, his momentary seisin is not capable of being assigned; and therefore the word *assigns* is incorrect and useless. Sugd. n. Gilb. Uses, 185. Noy's Maxims, 305, 9th ed.

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

any part thereof respectively. AND ALSO all deeds, evidences, and writings, touching and concerning the said hereditaments and premises, and every or any part thereof, now in the custody or power of the said [*grantor*] and [*trustee to prevent dower*], or either of them, or which they or either of them can or may obtain or procure, without suit at law or in equity. TO HAVE AND TO HOLD the said several messuages, tenements, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said [*trustee for sale, &c.*], and his heirs; TO THE USES, upon the trusts, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinbefore referred to, and hereinafter mentioned, expressed, and declared, of and concerning the same; that is to say, TO THE USE, intent, and purpose that the said [*grantee*], his executors, administrators, and assigns, shall and may henceforth, for and during the (*f*) natural lives of them the said [*three nominees*] and the lives and life of the survivors and survivor of them, and up to the day of the decease of such survivor, have, receive, and take by and out of the rents, issues, and profits of the said messuages, tenements, lands, hereditaments, and premises hereinbefore mentioned, and hereby appointed, granted, and released, or intended so to be, *One* annuity, yearly rent-charge, or sum of pounds of lawful money of Great Britain and Ireland, free and clear of and from all taxes, charges, and deductions whatsoever, as well parliamentary or otherwise, for or in respect of any matter, cause, or thing whatsoever, now taxed, charged, assessed, or imposed, or hereafter to be taxed, charged, assessed, or imposed upon the said hereditaments and premises, or any part thereof, or upon the said [*grantee*], his executors, administrators, or assigns, for or on account of such annuity, yearly rent-charge, or sum of pounds: *The*

All deeds, &c.

Habendum to trustee to the uses, upon the trusts, &c. after mentioned, viz.

To the use and intent that grantee may receive out of the rents of the premises an annuity for the lives of three nominees, clear of taxes, &c.

(*f*) If it be for years determinable on lives, say, "the term of ninety-nine years, if the said [*three nominees*], any or either of them, should so long live, have, receive, &c." *ut supra.*

FOR YEARS DETERMINABLE ON LIVES.

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE &c.

said annuity, yearly rent-charge, or sum of pounds, to be paid and payable quarterly to him the said [*grantee*], his executors, administrators, or assigns, at or in the Common Dining Hall of Lincoln's Inn, in the county of Middlesex, by four equal quarterly payments in the year; that is to say; the day of , the day of , the day of , and the day of , in every year, by even and equal portions; the first payment thereof to begin and be made on the day of next ensuing the day of the date of these presents; together with a proportional part of the same annuity, yearly rent-charge, or sum of pounds, for the time which shall elapse between the last of the said days of payment preceding the day of the decease of the survivor of them the said [*nominees*], and the day of such survivor's decease; as in the condition to the said hereinbefore in part recited bond or obligation is mentioned. AND (*g*) TO THIS FURTHER USE, intent and purpose, that if any quarterly payment of the said annuity, yearly rent-charge, or sum of pounds, or any part thereof, should be behind and unpaid by the space of fourteen days, next over or after any or either of the said days of payment, whereon the same is hereinbefore appointed to be paid as aforesaid; then, and in such case, and as often as it shall so happen, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, into and upon the said several messuages, tenements, lands, hereditaments, and premises hereby appointed, granted, and released, or intended so to be, and every of them, or any part thereof, to enter and distrain for the same annuity, yearly rent-charge, or sum of pounds, and all arrears thereof; and the distress and distresses then and there found, to take, lead, drive, carry away, and impound; and the same in pound to detain and keep, until the said annuity, yearly rent-charge, or sum of pounds, and all arrears thereof, and all costs, charges, and expences whatsoever sustained or occasioned

payable quarterly, with a proportional part to death of the survivor.

Power of distress by way of use.

(*g*) As this deed is within the 27 Henry VIII. c. 10. s. 4. *ante*, 603, the express declaration of use, giving a power of distress, is not necessary, although it is usually made in similar instances.

Power of distress unnecessary, when a rent is created by way of use.

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

by or attending the making, taking, and keeping, such distress then and there found, shall be fully paid and satisfied: And in default of payment thereof in due time after such distress shall be made and taken, to appraise, sell, or otherwise to act therein according to due course of law, in the same manner in all respects as landlords are by act of parliament authorized to do in respect to distresses for arrears of rent upon leases for years; to the intent that thereby and therewith the said [*grantee*], his executors, administrators, and assigns, shall and may be fully paid and satisfied the said annuity, yearly rent-charge, or sum of pounds, and all arrears thereof, or so much thereof as shall be then remaining due and unpaid, and all costs, charges, and expences whatsoever sustained or occasioned by the non-payment thereof. AND TO THIS FURTHER USE (*h*), intent, and purpose, that if the said annuity, yearly rent-charge, or sum of pounds, or any part thereof, should be behind and unpaid by the space of twenty-eight days next over or after any of the said days or times appointed for the payment thereof as aforesaid, then, and in such case, and as often as it shall so happen, although no formal demand thereof be made, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, into and upon the said several messuages, tenements, lands, hereditaments, and premises hereby appointed, granted, and released, or intended so to be, or into or upon any of them, or any part thereof, in the name of the whole, to enter; and the same to have, hold, and enjoy, and the rents, issues, and profits thereof, and of every part thereof, to receive and take to, and for his and their own use and benefit, until he or they shall be thereby or therewith, or otherwise fully paid and satisfied, all arrears of the said annuity, yearly rent-charge, or sum of pounds, and also so much of the said annuity, yearly rent-charge, or sum of pounds as shall accrue and grow due during such time as the said [*grantee*], his executors, administrators, and assigns, shall continue in possession of the said several messuages, tenements, lands, hereditaments, and premises, after such entries as afore-

Power of entry by way of use.

(*h*) *Vide ante*, 626.

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

said; together with all such losses, costs, charges, damages, and expences whatsoever as shall be sustained or occasioned by reason or means of the nonpayment thereof, or of any part thereof, at or on the days appointed for the payment thereof as aforesaid: and such possession when taken, to be without impeachment of waste (*i*). AND *as to, for, and concerning* the said several messuages, tenements, lands, hereditaments, and premises, hereinbefore mentioned, and hereby appointed, granted, and released, or intended so to be, subject to the said annuity, yearly rent-charge, or sum of pounds, and the powers and remedies hereby given and limited for securing and enforcing the payment thereof; TO THE USE of the said [*trustee for sale, &c.*], his heirs and assigns for ever; UPON THE TRUSTS, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinafter mentioned, expressed, and declared of and concerning the same; that is to say; UPON TRUST to permit and suffer the said [*grantor*], his heirs and assigns, to receive and take the rents, issues, and profits thereof, to and for his and their own use and benefit, until some default shall happen to be made of and in payment of the said annuity, yearly rent-charge, or sum of pounds, or some part thereof, at or on the days or times, and in the manner limited and appointed for the payment thereof as aforesaid. AND ALSO UPON FURTHER TRUST, that in case the said annuity, yearly rent-charge, or sum of pounds, or any part thereof, should happen to be behind or unpaid by the space of sixty days next over or after any of the said days or times of payment thereof, or whereon the same is hereinbefore limited and appointed, and ought to be paid as aforesaid; then and in such case, and whenever the same shall happen, it shall and may be lawful to and for the said [*trustee for sale, &c.*], his heirs or assigns, and he and they are hereby fully authorized and empowered, to sell and absolutely to dispose of the said several messuages, tenements, lands, hereditaments, and premises hereinbefore mentioned, and hereby appointed, granted, and released, or intended so to be, either together or in parcels, and either by public sale

And subject to annuity to the use of trustee for sale, upon the trusts, &c. after mentioned; viz.

Upon trust to permit grantor to receive rents until default in paying annuity.

And on default in paying annuity by sixty days, to sell the premises, or part thereof, subject to annuity:

(*i*) *Vide ante*, 628.

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

or private contract or partly by public sale, and partly by private contract, to any person or persons whomsoever, for the most money or best price or prices that can be reasonably had or gotten for the same, subject to the said annuity, yearly rent-charge, or sum of pounds; *And* to execute all such deeds, conveyances, and assurances of the said hereditaments and premises to the purchaser or purchasers thereof, as shall be requisite or necessary for the completion of such sale or sales; *And* to stand and be possessed of and interested in all and every the sums and sum of money to arise and be produced from the sale or sales hereinbefore directed to be made, and of the rents, issues, and profits, of the said hereditaments and premises, to arise and become payable after the same hereditaments and premises shall become saleable, until the sale or sales thereof shall be completed; UPON TRUST thereout in the first place to retain and reimburse to and for himself and themselves, all such costs, charges and expences as he or they shall or may sustain, expend, or be put unto, in, or about the making and completing of such sale or sales, or otherwise in the execution of the trusts hereby reposed in him and them: *And* as to the surplus of the money arising from the sale of the said hereditaments and premises hereinbefore released, after payment of the said costs, charges, and expences; UPON TRUST, by and out of the same surplus to pay to the said [*grantee*], his executors, administrators, and assigns, so much of the said annuity, yearly rent-charge, or sum of pounds, as at the time of completing such sale or sales shall happen to be in arrear and unpaid; and also all such sums of money, losses, costs, charges, damages, and expences, if any, as the said [*grantee*], his executors, administrators or assigns, or any of them, shall pay, sustain, expend, or be put unto, for or by reason or means of the non-payment of the said annuity, yearly rent-charge, or sum of pounds, or any part thereof, at or on the days and times, and in the manner herein before mentioned or appointed for payment thereof, or otherwise howsoever relating thereto. AND UPON FURTHER TRUST to place out and invest the residue of the money to arise by such sale or sales, and of the rents, profits, and produce, of the said several messuages,

and to be possessed of the money arising therefrom;

Upon trust to retain expences.

And as to the surplus.

Upon trust to pay arrears of annuity due at the time of sale, and all costs, &c.

And to invest the residue upon government security, at interest, in the name of the trustee;

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tenements, lands, hereditaments, and premises, until such sale or sales shall be completed, upon government security at interest, in the name or names of him the said [*trustee for sale &c.*], his executors, administrators, or assigns. AND *it is hereby declared and agreed* by and between the said parties to these presents, that the said [*trustee for sale, &c.*], his executors, administrators, and assigns, shall stand possessed of and interested in the monies so to be placed out and invested; UPON TRUST, by and out of the dividends and yearly proceeds thereof; and if such yearly interest, dividends, and proceeds should be insufficient, then in addition thereto, by calling in and disposing from time to time, of a sufficient part of the principal money so to be invested, or the stocks, funds, or securities, for the same, to pay unto the said [*grantee*], his executors, administrators, or assigns, the said annuity, yearly rent-charge, or sum of pounds, as and when the same shall grow due and become payable, or so much thereof as shall from time to time be in arrear and unpaid: AND ALSO UPON TRUST, by and out of the money so to be placed out or invested, and the dividends, interest, and yearly proceeds thereof, to retain and reimburse to and for him the said [*trustee for sale,* &c.], his executors, administrators, and assigns, all such costs, charges, and expences as he or they may sustain or be put unto in the execution of the trusts hereby reposed in him and them, respecting the money hereinbefore directed to be invested or placed out at interest; *And* subject to the trusts hereinbefore declared concerning the money so to be invested or placed out at interest as hereinbefore mentioned, the same and the interest thereof, or so much thereof and of the interest thereof, as shall not be applied in answering such several trusts as are hereinbefore thereof declared, shall be IN TRUST for the said [*grantor*], his executors, administrators, and assigns, to and for his and their own absolute use and benefit. PROVIDED ALWAYS, *and it is hereby declared and agreed* by and between the said parties to these presents, that after the decease of the survivor of them the said [*three nominees*], and full payment of the said annuity, yearly rent-charge, or sum of pounds, and of such proportional part thereof, and of all costs, charges,

Upon trust out of interest, or if interest not sufficient, to dispose of part of the principal, and to pay the annuity to grantee.

And to retain all costs, &c.

And subject thereto;

In trust for grantor, his executors, &c.

After decease of annuitants, and payment of all arrears of annuity, premises, or so much thereof as shall not be disposed of, to be in

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damages, and expences as aforesaid, the said several messuages, tenements, lands, hereditaments, and premises hereby appointed, granted, and released, or intended so to be, or so much thereof, if any, as shall not be disposed of under or in pursuance of the trusts hereinbefore declared or expressed, shall be IN TRUST for the said [*grantor*], his heirs and assigns for ever, and be conveyed as he or hey shall direct or appoint. PROVIDED ALSO, *and it is hereby further declared and agreed*, by and between the said parties, that all such contracts, agreements, sales, dispositions, conveyances, assurances, acts, deeds, matters and things, as shall be entered into, made, done, or executed by the said [*trustee for sale*, &c.], his heirs or assigns, of or concerning the said several messuages, tenements, lands, hereditaments, and premises, hereby appointed, granted, and released, or intended so to be, or any part or parts thereof, shall to all intents, constructions, and purposes, whatsoever, be as valid and effectual in the law, although the said [*grantor*], his heirs or assigns, should not execute the same, or join therein, or assent thereto (*k*), as such contracts, covenants, agreements, conveyances, assurances, dispositions, acts, deeds, matters and things would be, if the said [*grantor*], his heirs and assigns, had duly executed the same, and joined therein or assented thereto: [*And* that the person or persons to whom the said [*trustee for sale*, &c.,] his heirs or assigns, shall convey or otherwise dispose of the several messuages, tenements, lands, hereditaments, and premises, hereby appointed, granted, and released, or intended so to be, or any part or parts thereof, shall, notwithstanding the said [*grantor*], his heirs or assigns, should not execute the same, or join therein, or assent thereto, be intitled to have, hold, and enjoy, the same several messuages, tenements, lands, hereditaments, and premises, against the said [*grantor*], his heirs and assigns, and all other persons whomsoever claiming or to claim by, from, through, under, or in trust for him, them, or any of them:] *And* that the receipt or receipts of the said [*trustee for sale*, &c.], his heirs and assigns, shall from time to time be a good and

trust for grantor, his heirs and assigns, and to be conveyed as he shall appoint. Sales to be valid, without grantor's joining therein.

Receipts of trustee to be sufficient discharges to purchasers.

(*k*) *Vide ante*, 569. (*e*).

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sufficient discharge or good and sufficient discharges to the purchaser or purchasers of the said several messuages, tenements, lands, hereditaments, and premises, so to be sold as aforesaid, or any part or parts thereof, and to his, her, or their respective heirs, executors, administrators, and assigns, for so much of the purchase-money as shall therein be acknowledged to be or to have been received; *And* that such purchaser or purchasers, his, her, or their heirs, executors, or administrators, shall not afterwards be answerable or accountable for any loss, misapplication, or nonapplication of such purchase-money so to be received, or any part thereof, nor be obliged to enquire into the reason of making such sale or sales. PROVIDED ALSO, *and it is hereby further declared and agreed* by and between the parties to these presents, that the said [*trustee for sale*, &c.], his heirs, executors, administrators, or assigns, shall not be charged or chargeable with or for any sum or sums of money other than such as shall actually and respectively come to his and their hands by virtue of these presents; nor with or for any loss or damage which may happen in or about the execution of all or any of the trusts aforesaid, without his or their wilful default. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, for and during (*l*) the natural lives of the said [*three nominees*], and the lives and life of the survivors and survivor of them, the said annuity, yearly rent-charge, or sum of pounds, and such proportional part thereof as aforesaid, free from taxes, and clear of all other deductions whatsoever, at the days and times, and in manner and form ex-

Trustee not to be accountable for involuntary loss.

Covenant to pay annuity for the lives and life of three nominees, and the survivors and survivor of them.

(*l*) If it be for years determinable on lives, say,

FOR YEARS, DETERMINABLE ON LIVES.

"for and during the term of ninety-nine years, if the said [*three nominees*], any, or either of them, should so long live, the said annuity, &c." *ut supra*.

pressed, limited, and appointed for payment thereof, in and by the said in part recited bond or obligation. AND THE SAID [*trustee to prevent dower*], doth hereby for himself, his heirs, executors, and administrators, covenant and declare with and to the said [*trustee for sale*, &c.], his heirs and assigns, that he the said [*trustee to prevent dower*], hath not at any time heretofore made, done, executed, committed, or knowingly suffered, or been privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said several messuages, tenements, lands, hereditaments, and premises, hereby appointed, granted, and released, or intended so to be, or any part thereof, are, is, can, shall, or may be conveyed, impeached, charged, or in any wise incumbered. AND THE SAID [*grantor*] for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, with and to the said [*trustee for sale*, &c.], his heirs and assigns, by these presents in manner following; that is to say; that (notwithstanding any act, deed, matter, or thing whatsoever made, done, or committed, or knowingly or willingly suffered to the contrary) they the said [*grantor*], and [*trustee to prevent dower*], now have in themselves, or one of them hath in himself, good right, full power, and lawful and absolute authority by these presents to direct, limit, and appoint, grant, release and convey, or otherwise assure the said several messuages, tenements, lands, hereditaments, and premises, hereby appointed, granted, and released, or intended so to be, and every of them, and every part and parcel thereof, with their and every of their appurtenances, to the uses, upon the trusts, and to and for the intents and purposes, and in manner and form aforesaid, according to the true intent and meaning of these presents: AND that all and singular the said several messuages, tenements, lands, hereditaments, and premises hereby appointed, granted, and released, or intended so to be, shall and may, from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinbefore limited, expressed, declared, and contained, of and concerning the same; AND shall

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Covenant by trustee to prevent dower, that he has not incumbered.

Covenant by grantor, that he and trustee to prevent dower have good right to convey in fee:

premises to remain to uses, &c. hereby declared:

for quiet enjoyment:

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and may be accordingly peaceably had, held, and enjoyed, without any lawful let, suit, trouble, denial, eviction, interruption, claim, or demand, whatsoever, of or by him the said [*grantor*] or his heirs, or by any other person or persons whomsoever. AND free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise, by him the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against, all, and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, right and title of dower, uses, trusts, wills, entails, rents and arrears of rent, statutes, recognizances, judgments, extents, executions, estates, titles, charges, and incumbrances, whatsoever, had, made, done, committed, or suffered by the said [*grantor*], his heirs or assigns, or by any other person or persons whomsoever: AND MOREOVER, that he the said [*grantor*] and his heirs, and all and every other person or persons whomsoever, having, or lawfully or equitably claiming, or who shall or may hereafter have, or lawfully or equitably claim any estate, right, title, trust, or interest into, or out of, the said several messuages, tenements, lands, hereditaments, and premises, hereby appointed, granted, and released, or intended so to be, or any part thereof, shall and will from time to time, and at all times hereafter, upon every reasonable request of the said [*trustee for sale*, &c.], his heirs or assigns; but at the proper costs and charges in the law of the said [*grantor*], his heirs or assigns; make, do, acknowledge, levy, suffer, and execute; or cause or procure to be made, done, acknowledged, levied, suffered, and executed, all and every such further and other lawful and reasonable acts, deeds, conveyances, and assurances in the law whatsoever, for further, better, more perfectly, absolutely, or satisfactorily directing, limiting and appointing, conveying, assuring, and confirming the said several messuages, tenements, lands, hereditaments, and premises hereby appointed, granted, and released, or intended so to be, and every of them, and every part and parcel thereof, with their and every of their appurtenances, to the uses, upon the trusts, and to and for the intents and purposes, and with, under, and subject to

free from incumbrances:

for further assurance:

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the powers, provisoes, declarations, and agreements, hereinbefore mentioned, expressed, and declared of and concerning the same, or such of them as shall then remain to be performed, and capable of taking effect; be the same by fine, feoffment, common recovery or recoveries, or other matter of record, or not of record, or otherwise howsoever, As by the said [*trustee for sale*, &c.], his heirs or assigns, or any of them, or his, their, or any of their counsel learned in the law, shall or may be lawfully and reasonably advised, devised, or required: AND FURTHER, that he the said [*grantor*], his heirs and assigns, shall and will join and concur in the making of any sale or sales to be made, or proposed to be made, by the said [*trustee for sale*, &c.], his heirs or assigns, under or by virtue of the trusts hereinbefore mentioned; and in executing the several conveyances and assurances of the said hereditaments and premises to the purchaser or purchasers thereof; and enter into all usual covenants with such purchaser or purchasers, his, her, or their heirs, executors, administrators, and assigns, for the estate, title, possession, and further assurance of the said hereditaments and premises, or such of them as shall be so sold, or do any other act or acts for confirming such sale or sales; *Nevertheless* (*m*) *it is hereby agreed and declared*, that the joining of the said [*grantor*], his heirs or assigns, in any such sale or sales, conveyance or conveyances as aforesaid, shall not in anywise be deemed or considered as essential or necessary to perfect the title of the purchaser or purchasers of the said hereditaments and premises, or any part thereof; the same being intended only for the further satisfaction of such purchaser or purchasers, (*n*) (*Add defeazance on the judgment*, ut ante, 557 (*o*); *and power*

and that grantor, his heirs and assigns, will join in the sale and conveyances to purchasers, and enter into usual covenants;

but such concurrence not to be essential.

(*m*) *Vide ante*, 569. (*e*).

ATTENDANT TERM.

(*n*) If there be an attendant term, according to the present practice it should be assigned by a separate deed.

(*o*) If it be for years determinable on lives, say,

FOR YEARS, DETERMINABLE ON LIVES.

"for and during the term of ninety-nine years, if the said [*three nominees*], any or either of them, should so long live, at the several days and times, &c." *ut ante*, 557; *varying it as the circumstances of the case require.*

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On repurchasing annuity, trustee to reconvey premises, or such part as shall not be sold under trusts, unto grantor, or his heirs, &c.; and if any part be sold, and produce invested in the funds, to transfer securities to grantor, or his executors, &c.

to repurchase, ut ante, 559; *substituting in this instance, at the bottom of page* 560;) AND then and in such case the said [*trustee for sale,* &c.], his heirs or assigns, shall and will, at the request, costs, and charges of the said [*grantor*], his heirs or assigns, reconvey or otherwise assure the said several messuages, tenements, lands, hereditaments, and premises, hereby appointed, granted, and released, or intended so to be, or so much thereof as shall not have been sold and disposed of under the trusts hereinbefore declared, unto and to the use of the said [*grantor*], his heirs and assigns; or as he or they shall direct or appoint; *And* then also and in that case, if the same hereditaments and premises, or any part thereof, should have been sold and disposed of, and the produce thereof invested upon government securities at interest, the said [*trustee for sale,* &c.], his executors, administrators, or assigns, shall and will transfer such government securities as may then remain unapplied and undisposed of for the purposes aforesaid, unto the said [*grantor*], his executors, administrators, or assigns; any thing herein contained to the contrary thereof in any wise notwithstanding. IN WITNESS, &c.

END OF THE FIRST VOLUME.

T. C. Hansard, Pater-noster-row Press.